(26,404)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 937.

JOHN HARDY ET AL., PETITIONERS,

vs.

SHEPARD & MORSE LUMBER COMPANY, CLAIMANT OF THE BARKENTINE "WINDRUSH."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 22, 1918.

a United States Circuit Court of Appeals for the Second Circuit.

JOHN HARDEY et al., Libellants-Appellees,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.

TRANSCRIPT OF RECORD.

Appeal from the District Court of the United States for the Eastern District of New York.

1 United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER COMPANY, Claimant.

Statement.

Aug. 10, 1916. Libel of John Hardy et al., filed.
Nov. 2, 1916. Answer to libel filed by claimant Shepard & Morse Lumber Company.
Mar. 19, 1917. Case tried before Hon. Van Vechten Veeder, J.
May 26, 1917. Opinion of Court filed.
Sept. 3, 1917. Final decree entered.
Sept. 20, 1917. Notice of appeal and assignment of errors filed by claimant.

Libel.

To the Honorable Judges of the United States District Court, Eastern District of New York:

In Admiralty.

The libel of John Hardy et al., libellants against the barkentine Windrush, her tackle, apparel, etc., in a cause of action,
2 civil and maritime for wages, allege as follows:

First: That the barkentine Windrush, an American vessel of over five hundred tons, at and during all the dates and times hereinafter mentioned, engaged in the merchant trade of the United States, is now lying or about to come within the jurisdiction of the United States and this Honorable Court.

Second: Your libelants allege that at and during all the dates

and times hereinafter mentioned, one Roberts was master of said vessel; that heretofore and on the 10th day of May, 1916, said vessel was lying in the port of Buenos Ayres, Argentine, South America.

Third: Your libelants, John Hardy, seaman; Fred Nielsen, seaman; August Nielsen,.seaman; Wilhelm Rohr, seaman; Paul Udson, seaman; John Broather, seaman; F. Christiensen, seaman; Johannes Heimo, seaman, and Arthur Goldstein, cook, further allege that heretofore and on the 10th day of May, 1916, or thereabouts, they were hired and engaged by the master of said vessel to make a voyage at Buenos Ayres to the port of New York as seamen and cook respectively at the rate of wages of Forty ($40.00) Dollars per month for cook and Twenty-five ($25.00) Dollars per month for your other libelants as seamen.

Fourth: Your said libelants further allege that in accordance with their contract of employment as above set forth, they went on board said vessel, performing all duties required of them until said
3 vessel reached the port of New York and including the 13th day of July, 1916.

Fifth: Your libelants further allege that on account of services performed by them as stated, there is now due and owing to them on account of wages, over and above all payments made on account to date hereof, the sum of Twenty-five ($25.00) Dollars to each of the above mentioned libelants described as seamen and the sum of Forty ($40.00) Dollars to your libelant Arthur Goldstein, who is mentioned as and who was cook on board said vessel.

Sixth: Your libelants further allege that the above said sums are due them and were due them on the 13th day of July, 1916, but that the master and owners of said vessel have illegally and wrongfully withheld the payment of same and still illegally withhold payment of said wages to them; that said wages have not been tendered to them and have illegally been deducted.

For a Second Cause of Action.

Seventh: Your libelants further allege that the master of the barkentine Windrush has paid to your libelants or persons on their behalf, the sum of one month's wages each in advance of the time earned; that said money was illegally deducted and paid; that your libelants received no value for said payments; that said payments were made in contravention to Section 10 of the U. S. Statutes, Section 4611 of the Act of Congress of March 6th, 1915, which section reads as follows:

4 Section 10 (*a*). That *is* shall be and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advanced wages or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this Section shall be deemed guilty of a misdemeanor

and, upon conviction, shall be punished by a fine of not less than $25.00 nor more than $100.00, and may also be imprisoned for a period of not exceeding six months, at the discretion of the Court. The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.00.

By reason of said statute, libellants allege that said wages are due and owing to them as alleged.

5 Eighth: Your libellants further make claim upon the master and owners of said vessel for waiting time in accordance with Sections 4529 and 4530 of the U. S. Revised Statutes and as amended, thereby claiming one day's pay for waiting time after the expiration of forty-eight hours from the date when due, or from July 15, 1916, thereafter until paid.

Ninth: That all and singular the foregoing are within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore, your libellants pray that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction may issue against the barkentine Windrush, and that all persons having or claiming any right, title or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Court may be pleased to decree the payment of your libellants' claims in the sum total of Two Hundred and Forty ($240.00) Dollars and for waiting time, and that said vessel may be sold and condemned to pay the same, and that your libellants may have such other and further relief as to the Court may seem just and proper.

SILAS B. AXTELL,
Proctor for Libellants.

Office and P. O. Address, No. 1 Broadway, Manhattan, New York.

6 STATE OF NEW YORK,
City and County of New York, ss:

Silas B. Axtell, being duly sworn, deposes and says that he is the proctor for the libellants herein; that he has read the foregoing libel and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

That the reason this verification is made by deponent and not by

libellants is because libellants are at the present time not within the jurisdiction of this court and not within the county where your deponent resides.

SILAS B. AXTELL.

Sworn to before me this 28th day of July, 1916.
MAURICE K. WISE,
Notary Public, New York Co., No. 252.

Register's No. 8189.
Certificate filed Kings Co. No. 61, Register's No. 8089.
Commission expires March 30, 1918.

7 *Answer.*

To the Honorable the Judges of the United States District Court for the Eastern District of New York:

The answer of Shepard & Morse Lumber Company, claimant of the barkentine Windrush, as proceeded against upon the libel of John Hardy and others, in an alleged cause of action for wages, alleges as follows:

First. The claimant admits the allegations of the first article of the libel as of the date of filing of said libel.

Second. The claimant admits the allegations of the second article of the libel.

Third. The claimant admits the allegations of the third article of the libel, except as to the amount of wages to be paid John Broather, and alleges that the same was not $25, but was $20 per month.

Fourth. The claimant denies that it has any knowledge or information sufficient to form a belief as to any of the allegations of the fourth article of the libel, except that it admits that the libellants went on board said vessel.

Fifth. The claimant denies each and every allegation of the fifth article of the libel.

Sixth. The claimant denies each and every allegation of the sixth article of the libel.

As to the second alleged cause of action,

Seventh. The claimant denies each and every allegation of the seventh article of the libel, except that it admits, on information and belief, that there was paid to each of the libellants or
8 persons on their behalf at Buenos Ayres an amount equal to one month's wages in advance of the time when the libellants earned wages on the barkentine Windrush.

Eighth. The claimant denies that the libellants are entitled to pay for waiting time, and denies each and every allegation of the eighth article of the libel.

Ninth. The claimant admits the allegations of the ninth article of the libel.

Tenth. Further answering, the claimant alleges, upon information and belief, that if any wages were paid in advance at Buenos Ayres

the same was done upon the advice and direction of the American Consul at Buenos Ayres and at the express request of the libellants; that an amount equal to all wages claimed due by the libellants in excess of the wages actually paid them at New York on or about July 15, 1916, was on said date deposited with the United States Shipping Commissioner at New York; that on July 27, 1916, the testimony of certain of the libellants was taken by their proctor, after which the claimant promptly offered to pay the libellants an amount equal to one month's wages as claimed by them, which offer was refused by the libellants on whose behalf demand was made for a further payment of $1.33 per day for seventeen days for each of the libellants; that the amount of wages claimed by the libellants in this suit, with legal interest, or a total sum of $236.57, was duly tendered to the libellants on August 25, 1916, and was refused; that an
9 amount equal to the wages claimed by the libellants, with legal interest, amounting to the total sum of $239.23, has been or is about to be on November 1, 1916, deposited in the registry of this court and tendered to the libellants pursuant to Admiralty Rule 36 of this Court; that such tender is without prejudice to the claimant's defenses to the suit of the libellants, and that the claimant denies any and all liability to the libellants.

Wherefore, the claimant prays that the libel may be dismissed, with costs, and for such other and further relief as may be just.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

STATE OF NEW YORK,
County of New York, ss:

Otis N. Shepard being duly sworn, deposes and says, that he is an agent of Shepard & Morse Lumber Company, the corporation claimant herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief; that the sources of his knowledge or information are reports received from the master of the barkentine Windrush; and that the reason why he makes this verification is that the claimant is a corporation, none of whose officers is within the City of New York.

OTIS N. SHEPARD.

Sworn to before me this 1st day of November, 1916.

[SEAL.] ROSCOE H. HUPPER,
Notary Public, New York Co., No. 302.

10 *Stipulation.*

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER COMPANY, Claimant.

It is stipulated between the proctors for the respective parties that this suit may be tried on the pleadings and on the following stipulation in addition to any other competent evidence already taken by either party and for the purpose of this suit it is stipulated with the same effect as if witnesses were called, subject to objections as to relevancy or materiality, as follows:

First. That the articles which the respective libellants signed before the American Vice-Consul at Buenos Ayres, or a copy thereof, shall be received in evidence, and said articles shall be deemed true and correct as to the wages of said libellants and advances made, and as to all matters stated therein.

Second. That the testimony of the libellants herein speaks for itself, but that all of those not called would testify that before securing and as a means of securing employment on the barkentine Windrush, it was necessary for him to sign a receipt or advance note
11 for one month's wages and deliver the same to a shipping master at Buenos Ayres, which, when delivered, was an assignment out of wages of the amount therein named, and that each of the libellants did sign such a receipt or advance note and delivered the same to one Tommy Moore, or his representative.

Third. That the master would testify shipping of seamen for sailing vessels at Buenos Ayres is controlled by shipping masters, among whom was the aforesaid Tommy Moore; that the master of the barkentine Windrush, if called, would testify that it would have been impossible to secure a crew for said ship at Buenos Ayres except by agreeing to pay one month's wages in advance; that the advance notes which the respective libellants signed at Buenos Ayres were presented to the American Vice-Consul at Buenos Ayres before the libellants signed the articles, and the advances were noted on said articles by said Vice-Consul; that said master was then directed by said Vice-Consul, in the presence of the respective libellants, to honor said receipts or advance notes and to pay the same on account of the wages of the respective libellants, and that pursuant to said direction there was paid to Tommy Moore, or his representative, the amounts named in the aforesaid advance notes; that the amounts thus paid at Buenos Ayres were deducted from the wages of libellants that, except for such payment, would have been due to the respective libellants when they were discharged at New York; that said master would testify that he received neither directly nor indirectly any part of

said advances; that the articles were read to the respective libellants by said Vice-Consul before they signed, and that the libellant
12 Paul Udson told said master that he wanted to get away from Buenos Ayres as soon as possible; that he might be arrested or prevented from leaving if he went to the consulate to sign the articles, and beseeched said master to assist him, and arranged that the articles should be signed for him by one Anderson.

Fourth. That the American Vice-Consul at Buenos Ayres, when he instructed the master of the barkentine Windrush to honor said advance notes, was acting in the performance of his regular official duties; that the transactions herein mentioned took place on shore and on shipboard at Buenos Ayres, Argentine Republic, as indicated by the testimony and by the facts as stipulated.

Fifth. That Sections 236 and 237 of the Consular Regulations of the United States, duly published by the State Department, provide as follows:

"236. No advance wages.—Except in the case of whaling vessels, it is not lawful to pay any seaman wages before leaving the port at which such seaman may be engaged in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay to any one except an officer authorized by act of congress to collect fees for such service, any remuneration for the shipment of a seaman. If any such advance wages or remuneration shall have been paid or contracted for, the consul, in making up the account of wages due the seaman upon his discharge, will dis-
13 regard such advance payment or agreement and award to the seaman the amount to which he would be entitled if no such payment or agreement had been made. Nor should consuls permit the statute to be evaded indirectly, as by part payment in advance and then stating rate of wages too small. R. S., secs. 4532, 4533; 23 Stat. L., 55, sec. 10; 24 Id., 80, sec. 3; 27 Fed. Rep., 764."

"237. Advances to seaman shipped in foreign ports.—The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of the act referred to in the next preceding paragraph. The final clause of the act, which declares that this section shall apply as well to foreign vessels as to those of the United States, and that in case of violation a clearance shall be refused them, is a clear indication that congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in the United States alone. The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports. In the settlement of wages due seamen in such cases, therefore, consular officers will take into account what has been paid in advance. 22 Fed. Rep., 734."

Dated New York, March 19, 1917.

SILAS B. AXTELL, *Proctor for Libellants.*

BURLINGHAM, MONTGOMERY & BEECHER,

Proctors for Claimant.

14 JOHN HARDY, one of the libellants, having been duly sworn, testified in his own behalf as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?
A. John Hardy.
Q. You are a seaman?
A. Yes.
Q. Where were you born?
A. In Ohio.
Q. How long have you been going to sea?
A. Eleven years.
Q. You know the bark Windrush?
A. Yes.
Q. Where did you join her?
A. In Buenos Ayres.
Q. What were your wages?
A. $25.00 a month.
Q. In what capacity were you on the bark?
A. As A. B.
Q. Do you know, Tommy Moore, a boarding house keeper?
A. Yes.
Q. Were you stopping in his house?
A. Yes.
Q. How long?
A. Two days.
Q. Did you go to work on the Windrush?
A. I signed on the Windrush, yes.
Q. Did you work on her?
A. No, not before I signed .
Q. Did you work afterwards?
A. Yes.
Q. How long?
A. Two months and three days.
Q. When did you come aboard her?
A. The 10th of May, 1916.
Q. When did you leave her?
A. The 13th of July.
Q. You left the boat the 13th of July?
A. Yes.
Q. At what port?
A. At the Port of New York.
Q. Did you receive your wages in full at that time?
A. No.
Q. How much money did you receive?
A. $19.00 and some odd cents. I forget just how much exactly.

15 Q. Did you receive any slops or advances?
A. Yes.

Q. How much?
A. $5.05.
Q. What was that in?
A. Clothing and tobacco.
Q. What were the pieces of clothing?
A. I got a pair of slippers.
Q. How much did they charge for that?
A. Seventy-five cents.
Q. What else?
A. Tobacco.
Q. What else?
A. Oilskins.
Q. The whole thing amounted to how much?
A. $5.05.
Q. Did you get any cash from the captain?
A. Yes.
Q. How much?
A. $5.00.
Q. Where did you get that?
A. In New Jersey.
Q. Before you were paid off?
A. Yes.
Q. You received from the captain in cash and slops, how much?
A. $10.05.
Q. Then you received $19.00?
A. I don't exactly remember. It was $19.00 and $5.00 I got from the skipper in New Jersey.
Q. How much did you receive. back slops and cash including what you got in New York and paid off?
A. I don't remember exactly.
Q. Was it over $26.00?
A. I could not have gotten $26.00.
Q. Approximately how much did you get?
A. About $25.00 and some odd cents.
Q. You were aboard the ship two months and three days?
A. Yes.
Q. Your wages were $25.00 a month, then your wages would be for that period $52.49?
A. Yes.
Q. Of that sum you received about $25.00?
A. Yes.
16 Q. What was done with the rest of the money?
A. He claims——

My Mr. Hupper: I object to this; it is not what he claims, but what actually is.

A. (Continuing:) He claims that he gave us advance money in Buenos Ayres.
Q. Who gave you advance money in Buenos Ayres?
A. I suppose it was the captain who gave the advance money.

Tommy Moore made me sign this advance check. I signed the check in the house, in Tommy Moore's house.

Q. What did it say on that slip?

A. The only thing that I saw was $25.00, the rest was blank.

Q. Did it say what it was for?

A. It didn't say.

Q. How much did you owe Moore?

A. For 2 days' board.

Q. Had you been aboard the ship before you went to Moore's house and were the other men aboard the ship?

By Mr. Hupper: I move to strike out "were the other men aboard the ship."

Q. Did you tell the captain how long you had been in Moore's house?

A. No.

Q. Have you ever had any conversation with the captain about this advance?

A. No, we had a little trouble in the Commissioner's office?

Q. What conversation took place at the Commissioner's?

A. About the advance money.

Q. What was it?

A. We wanted the advance money. The captain said he wouldn't give any advance.

17 Q. Why?

A. Because he paid the advance money in Buenos Ayres.

Q. What did he say to the Commissioner about it?

A. He said we wouldn't get any more. That was an end to it. $25.00 was paid in Buenos Ayres.

Q. Where did this conversation take place?

A. At the desk at the Commissioner's.

Q. On what day?

A. On the 13th or 14th.

Q. On the same day you got your money?

A. Yes.

Q. Did Moore give you any money?

A. No.

Q. Did you ask him for any?

A. Yes.

Q. He wouldn't give it to you,

A. No.

Q. It cost you $25.00 for 2 days' board?

A. Yes.

Q. How much would 2 days' board amount to?

A. It's 12 pesos a week.

Q. How much is a peso?

A. 2 pesos and 39 centavos for one American dollar.

Q. How many centavos in a peso?

A. 100.

Q. Then it would be at the rate of $.75 a day for board?

A. Yes.

Q. Then you owed Tommy Moore $1.50?
A. Yes.

Cross-examination.

By Mr. Hupper:

Q. On what ship did you go to Buenos Ayres?
A. Bark Stanley.
Q. From what port?
A. Cardiff.
Q. What date did you sail on her?

By Mr. Axtell: Objected to as being immaterial and move that it be stricken out.

18 Q. In what capacity?
A. As a. b.
Q. What date did you arrive in Buenos Ayres?
A. I came from Montevideo.
Q. About what date did that ship arrive there?
A. March, I think.
Q. The 1st of March?
A. In the month of March.
Q. About what date was it?
A. The last of February.
Q. How long did you stay in Montevideo?
A. I didn't stay *that* at all, I went to Buenos Ayres.
Q. On the same boat?
A. No.
Q. What is the name of the boat?
A. One of the Michalovitch's liners.
Q. How long does it take to run down to Buenos Ayres?
A. Over night.
Q. You went down from Montevideo?
A. Yes.
Q. And you were in Buenos Ayres from about the 1st of March?
A. About a week. I stopped there about a week and engaged on the Tejuca.
Q. Is she a bark?
A. Yes, a three masted bark.
Q. Where did you go with her?
A. South Georgia.
Q. Here in the States?
A. No, down in the Antar-ic.
Q. What time did you get back to Buenos Ayres?
A. About 2 months later.
Q. What date would that be?
A. (Witness produces what purports to be a discharge, written on plain paper and bearing what purports to be signature of master of the ship. On the bottom is signed Buen Aires, 4th d e. Mai, 1916, L. Johnessen Joier Ao Bark Tjuca.)
Q. What did you do in Buenos Ayres?

19 A. I went to Buenos Ayres to a place called the Shamrock.
Q. Did you spend any money there?
A. I paid a week's board, 14 pesos.
Q. Did you spend any other money?
A. Certainly.
Q. How much?
A. About all I had.'
Q. What date did you ship on the "Windrush"?
A. On the 10th of May.
Q. You went before the Shipping Commissioner?
A. No, the American *Counsel.*
Q. You were shipped from there?
A. Yes.
Q. You signed articles?
A. Yes.
Q. At what rate of wages?
A. $25.00.
Q. Were the articles read to you?
A. No.
Q. Did you hear them read?
A. No, I was outside.
Q. When did you sign them?
A. I was about the last one that signed, there was no one after me.
Q. Did you sign right inside?
A. Yes, inside.
Q. Before the Consul?
A. Yes.
Q. You knew what you were signing?
A. Yes.
Q. You say you signed a receipt for Tommy Moore?
A. I signed a note.
Q. That was at his house?
A. Yes.
Q. And that said $25.00?
A. Yes.
Q. Do you read and write?
A. Yes.
Q. Well?
A. Yes.
Q. What nationality are you?
A. My people were Austrians.
Q. Do you usually read newspapers and books, etc?
A. Yes.
Q. How long?
A. Every chance I get.
Q. Do you generally read any receipt or any other papers before you sign them?
A. Yes.
20 Q. And I suppose you read the articles before you signed them?
A. I read the new law, the new Seaman's Law.

Q. When?
A. In Buenos Ayres.
Q. That was before you signed articles?
A. Yes.
Q. You read it through pretty carefully?
A. Yes, certain paragraphs of it.
Q. You understood what you were reading?
A. Yes.
Q. Did you look at these articles before you signed?
A. No.
Q. You signed the articles?
A. Yes, I signed articles but I didn't have them read to me.
Q. You can read?
A. Yes.
Q. You looked it over before you signed I suppose?
A. Yes, I suppose I did if I signed them.
Q. The articles were all filled out when signed them?
A. What do you mean?
Q. Were they all filled in?
A. The names were not filled in.
Q. Were the wages and the birthplace filled out before you signed?
A. I didn't notice that. I didn't ask any questions. He simply asked me if I understood, and I said yes.
Q. Understood what?
A. That I was signing.
Q. And you said yes?
A. Yes.
Q. And you signed?
A. Yes.
Q. Will you look at the articles here and tell me whether or not this is your signature?
A. Yes.

NOTE.—Witness identifies his signature as John Hardy on the 10th line on Page 2 of the articles made up at Buenos Ayres to which Consul certificates are attached. Same marked for identification.

21 Q. What date did you sail from Buenos Ayres?
A. On the next day.
Q. You didn't make any complaint, did you?
A. We didn't sail next day, yes we did.
Q. That is May 11th?
A. Yes.
Q. You didn't make any complaint or anything on the voyage, did you?
A. Nothing, but *or* course, there are complaints on every boat.
Q. Just ordinary ones, but you didn't complain about your wages, did you?
A. We were going to see the Commissioner up here and here get justice.

Q. You didn't make any complaint before about your wages?
A. No.
Q. You were perfectly well satisfied?
A. I was not exactly satisfied.
Q. You signed and were satisfied and you understood, is that right?
A. Yes.
Q. How long have you been going to sea?
A. 10 or 11 years.
Q. Did you apply to this man, Tommy Moore, for a job on a vessel?
A. Yes.
Q. He told you he would get you one?
A. Yes, he is a sort of a press-agent.
Q. Tommy goes out with the runners and gets men to come to his house and by and by, he gets them a job on the ship, is that right?
A. Yes.
Q. Practically, everybody does that in Buenos Ayres?
A. Yes, they have a *click*.
Q. You mean there are a number of men like Tommy?
A. They have 5 or 6 that work together.
Q. They all work together?
A. Yes.
Q. You say there are 5 or 6 that work together
A. Yes.
Q. I suppoes they control all the shipping in Buenos Ayres?
A. Almost all. They don't control English ships.
22 Q. Where do they get their English sailors?
A. English Sailors' Home.
Q. Where were you staying most of the time?
A. Do you mean where I lived?
Q. Yes.
A. At the Shamrock.
Q. You were spending your time at the docks?
A. No, around the streets. I was looking out for a job.
Q. These runners have a good many sailors in their control, is that right?
A. Yes.
Q. They pick them all up when they come in there?
A. Yes.

Redirect examination.

By Mr. Axtell:

Q. The articles were not read over to you by the Consul, you say?
A. No.
Q. And you didn't read it yourself?
A. No.
Q. Although you can read?
A. Yes.

Q. How were the articles presented to you for signature?
A. As they are there, open on this page, Page 2. (Counsel for libelant numbers pages of the articles from the beginning, which appears to consist of two sets of articles. In that connection, it is noted that the page referred to as Number 2, is now page No. 6.)
Q. How were the articles presented to you, open at pages 6 and 7?
A. Yes.
Q. Was page 5 or page 1 turned over to you so you might read it?
A. No, when I saw it, it was just as it is.
Q. Where did you sign it, whereabouts were you?
A. In the office of the Consul.
Q. Was the Consul present?
A. Yes.
Q. What is his name?
A. I don't know.
Q. What sort of a looking fellow is he?
A. A slight built man.
23 Q. Describe him further, if you can? Did he wear glasses?
A. I didn't notice.
Q. Light or dark?
A. Light.
Q. Was he the Consul or some clerk?
A. I don't know.
Q. Do you know his name, was it John S. Calvin?
A. I don't know.

Recross-examination.

By Mr. Hupper:

Q. Who was there besides you in the office, when you signed?
A. A runner.
Q. What is his name?
A. Benson.
Q. Were any of the other sailors there who signed on the "Windrush" at the same time?
A. Yes.
Q. They were in the office?
A. Yes.

JOHN BROEDKER, co-libelant herein, having been duly sworn, testified in his own behalf, as follows:

It is stipulated that the testimony taken in this action brought in the United States District Court, District of New Jersey, may be used by either party in any action subsequently brought in the United States District Court, Eastern District of New York, providing the action in New Jersey is discontinued.

Direct examination.

By Mr. Axtell:

Q. How old are you?
A. 26.
Q. Where were you born?
A. Amsterdam.
Q. You are not a citizen of the United States, is that right?
A. No citizen.
Q. Do you know the "Windrush"?
A. Yes.
Q. Where did you join her?
A. In Buenos Ayres.
Q. At what wages?
A. $20.00 a month.
Q. In what capacity?
A. Ordinary seaman.

It is stipulated on the record that witness signed May 10th and worked on the vessel until July 13th. It is stipulated that as to each of the other libelants that they signed articles before the Consul on May 11th, 1916, at Buenos Ayres, and worked on the ship until July 13th, date of the arrival in New York.

Q. You received all of your wages due, except $20.00?
A. Yes.
Q. $20.00 you claim is still owing?
A. Yes.
Q. Is this your signature? (Referring to line 12, page 6 of the articles).
A. Yes.
Q. Were the articles read to you when you signed your name there?
A. Yes.
Q. They read the articles to you?
A. Yes.
Q. You speak English?
A. A little bit.
Q. Do you understand it?
A. Yes, a little bit.
Q. Was anybody there besides you when you signed?
A. No, I was the last one.
Q. Was the captain there?
A. Yes, captain and the Consul.
Q. Was the runner there?
A. Yes.
Q. Do you know Tommy Moore, the boarding-house keeper?
A. I don't know him.
Q. Did you sign your name on any paper?
A. Yes, captain told, do you want advance. I said yes.

Q. You signed the advance?
A. Yes.
Q. How much?
A. $20.00.
25 Q. Where did you sign that paper?
A. At the Consul.
Q. You signed the advance in the Consul's office?
A. Yes.
Q. What was on the paper?

By Mr. Hupper: I object to that, as the paper is the best evidence.
By Mr. Axtell: Produce it.
By Mr. Hupper: We haven't it.
By Mr. Axtell: Where is it?
By Mr. Hupper: We know nothing about it.
By Mr. Axtell: Then the paper is lost?
By Mr. Hupper: We don't know anything about it.

Q. Where is the paper that you signed?
A. I don't know.
Q. Who did you give it to?
A. I didn't give it to anybody.
Q. Who was present when you signed it?
A. The captain.
Q. Anybody else?
A. Yes, one more.
Q. Who was this other man?
A. I don't know.
Q. Had you ever seen him before?
A. Yes, I seen him in the street.
Q. Did you ever see him at Moore's house?
A. I didn't go there.
Q. Who held the paper while you signed it?
A. The Consul.
Q. Which paper are you talking about?
A. This one.
Q. Is this the paper you have been talking about all the time? (Pointing to articles).
A. No, there was another paper there.
26 Q. What did you do with the other paper for the advance?
A. I don't know. Captain told me I was to get advance.
Q. Did the captain keep it?
A. Yes, captain give it to Consul.
Q. Is that your answer?
A. Yes.
Q. This other paper, not this one, the other paper, (referring to the articles) did captain give that paper to Consul?
A. Yes.
Q. Did you get any of that $20.00?
A. No.
Q. Not any?

A. No.
Q. Had you been living in Tommy Moore's boarding house?
A. No.
Q. Had you been living in any other boarding house?
A. No.
Q. Do you owe Tommy Moore any money?
A. No.
Q. Had you ever been living in his house?
A. No.
Q. Didn't you say that you had signed this receipt at his house?
A. No, on the street.
Q. You were there in Tommy Moore's house?
A. Yes.
Q. What were you doing there?
A. I was going on the ship, on the "Windrush" and we couldn't get a job on the ship. Somebody told me I must go to Tommy Moore.

By Mr. Hupper: I object to what somebody told him, unless he can identify the person.

Q. Who told you?
A. It was Hardy, the American fellow.
Q. He told you you would have to go to Tommy Moore's house?
A. Yes.
Q. Did you see the captain that day?
A. No.
27 Q. Did you see any of the officers of the ship that night?
A. No.
Q. You went to Tommy Moore and you got a job?
A. Yes.
Q. You didn't owe Tommy Moore any money at all, did you?
A. No.
Q. Where had you been before this ship?
A. On the Tijuca.
Q. Were you with Hardy on the Tijuca?
A. Yes.
Q. Where had you been stopping from the 4th of May until the 10th of May?
A. I was paid off two days before I got a job on this ship.
Q. Have you got your discharge?
A. Yes.
Q. Let me see it?
A. I haven't it with me. It is in my house.
Q. What house?
A. Hoboken.
Q. What number?
A. 194 Sixth Street, Hoboken.
Q. That is where you are stopping now?
A. Yes.

Cross-examination.

By Mr. Hupper:

Q. What day were you paid off from the Tjuca?
A. I don't know.
Q. Were you paid off same day as Hardy?
A. No, Hardy before me.
Q. You stayed there after Hardy?
A. Yes.
Q. Where did you stay after you went ashore at Buenos Ayres after you were paid off from the Tjuca?
A. I was around spending my money.
Q. Where did you spend this money?
A. I was going around.
Q. Did you spend all your money?
A. No, not all. I had 12 pesos left when I got a job.
Q. You were at Tommy's house?
A. I know where the house is.
Q. Had you ever been there before?
A. No.
Q. Is this the first time you were in Buenos Ayres?
A. Yes.
28 Q. Did you sign any paper for Tommy?
A. No.
Q. Did Tommy ask you to sign any paper?
A. No, but Tommy told "do you want job," I said "yes."
Q. Is that all?
A. Yes.
Q. Did Tommy say he was going to charge you something for getting you a job?
A. I don't understand what Tommy said.
Q. Did he say something you didn't understand?
A. He said something, I don't know what he said.
Q. Was Hardy there at Tommy's when you were there?
A. No, not Hardy, another fellow.
Q. Is he outside?
A. No, he has gone out with the "Kallamares." His name is Fred.
Q. Did Fred sign some paper for Tommy?
A. I don't know.
Q. Did you get a job through Tommy?
A. Yes.
Q. Tommy told Fred he was al- right and he would get him a job?
A. Yes.
Q. He told you the same thing?
A. Yes. He said I would get a job all right.
Q. Is that what he said?
A. Yes.
Q. Did you pay Tommy any money?
A. No.
Q. Did you give him anything?

A. No.
Q. Didn't you promise him anything?
A. No. I got nothing to do with Tommy.
Q. Except that you got a job through him?
A. Yes.
Q. What time of the day was it that you signed these articles at the Consul's office?
A. 4 o'clock or 3 o'clock.
Q. You have said something about another paper that you signed there, what was that?
A. This paper (referring to articles) and another one for advance.
29 Q. Did the Consul hand you that paper?
A. Yes.
Q. And you signed it before him, did you?
A. Yes. Consul say "you sign paper, you want advance?" I said "yes."
Q. Then the Consul handed you this paper?
A. Yes and I put my name on it.
Q. You handed it right back to the Consul?
A. Yes.
Q. Did it say $20.00 on that?
A. Yes.
Q. Did you tell the Consul that you wanted to pay Tommy some money?
A. No.
Q. You didn't tell him anything about it?
A. Captain ask "do you want an advance" and the Consul talk to me and I said "yes."
Q. You said "yes," you did?
A. Yes.

PAUL UDSON, one of the libelants herein, having been duly sworn, testified as follows:

Direct examination.

By Mr. Axtell:

Q. What is your name?
A. Paul Udson.
Q. You are a seaman?
A. Yes.
Q. What nationality?
A. Holland.
Q. Are you a citizen?
A. No.
Q. How long have you been going to sea?
A. 15 years.
Q. Do you know the "Windrush"?
A. Yes.

Q. You joined her the same as the other men on May 10th and left here on July 13th?
A. Yes.
Q. You got all your wages except $25.00, is that right?
A. Yes.
Q. One month's advance?
A. Yes.
Q. Did you sign a paper down there?
A. No.
Q. Did you sign the articles?
A. No, my name is not on those articles.
Q. Why didn't you sign the articles?
A. I was on board and asked the captain for a job and he said "all right, start tomorrow." I took my clothes in the morning and the chief mate said "You can't turn to." The captain wanted to see me, then I went to the captain. He said you have to go to Tommy Moore. I said "What about him?" He said he ships for the company.
Q. Did you go to see Tommy Moore?
A. Yes.
Q. The same day?
A. Yes.
Q. What day did you go aboard the ship?
A. Night of the 8th of May.
Q. What date did you go to see Tommy Moore?
A. On the 9th.
Q. What did you do at Tommy Moore's house?
A. I said to him "The captain sent me here." He said "all right, you belong to the crew then."
Q. Did you sign any papers for Tommy Moore?
A. No.
Q. Did you sign any advance?
A. No.
Q. You never signed the articles?
A. No.
Q. Didn't your name appear on the articles of the ship at all?
A. No.
Q. Whose name does appear on the ship where yours should appear?
A. I don't know, ask the captain.
Q. Did the captain tell you about any man that didn't ship that had signed?
A. Captain told me I can't sign on. I said "why not?" He said "we know all about it." I said "you don't know me I just come to Buenos Ayres." He told me to sign in any other name. I said I can't do this. I can't make a liar to the Consul, he know me. He sent another man to sign in my place.
Q. Who signed in your place?
A. I don't know.
Q. You never signed the articles?
A. No.

31 Q. Did you get any money from Tommy Moore?
A. No.
Q. Did the captain give you any money?
A. No.
Q. What wages have you received from the ship?
A. Only slops.
Q. How much slops?
A. About $7.00 and some cents.
Q. How much money did you get in New York?
A. $16.00 and a couple of cents.
Q. Did you get anything besides that at all?
A. No.
Q. Was anybody else present when the captain told you to go to Tommy Moore?
A. Yes.
Q. Who?
A. Hardy and the other fellow.
Q. You mean the man who testified?
A. He heard the captain say in the Consul's office "where is that fellow that signed for the other man's place."

Cross-examination.

By Mr. Hupper:

Q. When did you arrive in Buenos Ayres?
A. 10 days before I go on the "Windrush."
Q. You were paid off on May 8th from the "Santa Cecilia" (referring to what purports to be discharge from the "Santa Cecilia")?
A. Yes.
Q. Did you go up to Tommy Moore at Buenos Ayres?
A. No, I went on board and asked for a job.
Q. Who did you ask for the job?
A. The captain.
Q. Were you ever on the "Windrush"?
A. Yes.
Q. When?
A. On the 18th of November, 1915, at New York.
Q. Where did you go then?
A. St. John's.
Q. Did you desert at St. John's?
A. Yes.
32 Q. What ship did you go then?
A. On a schooner.
Q. Where did you join the "Santa Cecilia"?
A. In New York.
Q. Who signed these articles in your place?
A. I don't know. The Consul said I can't sign, he said "you can't sign."
Q. Who said you can't sign?
A. The captain.
Q. What day was that?

A. The same day we signed on.
Q. May 10th?
A. Yes.
Q. Did you send somebody up in your place?
A. No, I didn't send up.
Q. Can you read?
A. A little bit.
Q. If you saw that man's name, could you recognize it?
A. No.
Q. Will you look over these names and see if you see the man's name who went up in your place?
A. I think it was T. Anderson.
Q. Did you sign off at New York?
A. No.
Q. Were you paid off before the Shipping Commissioner?
A. Yes.
Q. Did you sign anything then?
A. I signed for the money we had coming, $16.00. I signed my name.
Q. What name did you sign?
A. Paul Udson.
Q. That was at the Shipping Commissioner's office down at the Battery?
A. Yes.
Q. Did you ever desert from any other ships besides the "Windrush"?

By Mr. Axtell: Objected to.

A. One.
Q. Were you ever punished for deserting?
A. No.
Q. Never been in jail?
A. No.
Q. Do you know Tommy Moore?
A. Yes.
33 Q. Did you ever talk with Tommy?
A. He started to talk with me. He said "Are you the fellow that came on the vessel?"
Q. What did you say?
A. I said, "yes, that is me."
Q. What did he say after that?
A. He walked away.
Q. Is that the last you talked with Tommy?
A. No.
Q. Did you know any of Tommy's runners?
A. No.
Q. Were you anxious to get back to the United States?
A. Yes.
Q. Didn't you ask Tommy or one of his runners to get you a job on this ship?

A. No, I asked the captain and the captain sent me to Tommy.
Q. Did you go to Tommy?
A. Yes. I go to Tommy he said "all right, captain sent you, you stay on board." He said "come in my house." I said "I sleep on board the ship." He wants me to sleep and eat in his house. The captain said I can't sleep aboard.
Q. Did you tell Tommy you better have somebody sign in your place?
A. Runner told him.
Q. This man was Anderson on Page A of the articles?
A. I don't know, it must be.
Q. Did you beg the captain to take you on this trip?
A. Yes.
Q. You wanted to go back to the United States?
A. Yes.
Q. You know the name of this runner of Tommy's that you were talking with?
A. No.
Q. What was at the Consul's office?
A. Yes.
Q. The runner was not aboard the ship?
A. Before we went out, he was there.
Q. When you talked with the runner, that was in the Consul's
34 office not in the ship?
A. Down in the street before the Consul's office.
Q. The captain was not there?
A. The captain just came around when we were finished.
Q. The captain was not talking with you then?
A. Yes.
Q. You mean he talked with you after he came around?
A. He said "where is that man who signed for him?" He said "that is the one," pointing.
Q. That is the first time you were talking with the runner?
A. Yes.

ARTHUR GOLDSTEIN, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. What is you- name?
A. Arthur Goldstein.
Q. What were you on the Windrush?
A. Cook.
Q. How much a month?
A. $40.00.
Q. You joined her May 10th and left July 13th?
A. No I had my wages start sooner because I signed a few days back.

Q. Is your name on the articles, referring to claimant's Exhibit I?
A. Yes.
Q. Point out your signature?
A. Witness points to line 1, page 6.
Q. That's your signature?
A. Yes.
Q. Where did you sign it?
A. Before the American Consul in Buenos Ayres.
Q. Was the Consul present?
A. Yes.
Q. Did he read the articles to you?
A. No.
Q. Did he tell you what they were?
A. He didn't say anything.
Q. Did he ask you whether you understood them?
A. No.
Q. Did you sign any other paper besides these articles?
A. No.
Q. Did you ever sign an advance note?
A. No.
Q. Do you know Tommy Moore?
A. Yes, I have been staying in his house.
Q. For how long?
A. Three or four days.
Q. Did you owe him any money?
A. Yes.
Q. How much?
A. I don't know, but I'll tell you how he got his money out of me.
Q. How did he get it?
A. I got a job on board the ship by the mate; captain wasn't on board when I came there and mate told me cook was on the drunk and told me to try to get the job if I wanted it. I started to work, I don't know how long, between six and eight weeks; close on to two months.
Q. How much a month?
A. I was supposed to get $45.00 a month.
Q. And board?
A. Yes.
Q. Did you sleep on board?
A. Yes. Instead of captain paying me every Saturday night, this boarding master came on board and paid me and took part of my wages out every week. Whatever I owed him I had to pay ten or fifteen times over again.
Q. Did you see the captain pay your wages to him?
A. No, but I think the captain got his share out of it every week.

By Mr. Hupper: I object to the answer of the witness.

By Mr. Axtell:

Q. How much money did you get on Saturday night?
A. I was supposed to get 22 or 23 pesos.

36 Q. What did you get?
A. Sometimes 16, sometimes 12, sometimes 14.
Q. Did you stay in Tommy Moore's boarding house during this time?
A. No.
Q. Did you owe Tommy Moore anything?
A. Yes, but that was paid in one week.
Q. How much did you owe him?
A. He never made up a bill; he didn't tell me I owed him anything; he simply took money.
Q. When was these three or four days that you stayed at his house?
A. Before I went on the ship.
Q. Before you went to work by the day?
A. Yes.
Q. At the time you signed articles, was there anything owing to you for wages earned ashore?
A. Yes for a few days and the captain told the Consul to date back on the articles.

By Mr. Hupper: I move to strike out the answer as not responsive to the question.

By Mr. Axtell:

Q. On what day did you sign?
A. I cannot remember.
Q. How long before the other men signed?
A. One or two days before.
Q. Articles say May 7th, is that the day you signed?
A. No, wages started on the 7th; my wages were put back two or three days.
Q. Assuming the other men signed on the 10th or 11th of May, would you state on that day you did sign?
A. We were paid every Saturday night and I believe there was three days coming to me and captain told the Consul to date it back.
Q. Did you hear the captain tell Consul to date it back?
A. Yes.
37 Q. How much money did you get when you came to New York?
A. I don't remember exactly, I think $43.00.
Q. About $43.00?
A. Yes.
Q. Did you get any tobacco during voyage?
A. No, only $5.00 when I got to New York.
Q. Then how much did you get before the commissioner?
A. $43.00 but I don't know if that $43.00 includes this $5.00 or not.
Q. If he does then you got about $38.00 before the commissioner?
A. Yes.

By Mr. Hupper: I object to all this testimony on the ground that records in Commissioner's office will show just what the witness got.

Q. Now you said, I believe, that you didn't sign any advance note or paper other than the articles?
A. Yes that's all I signed.
Q. Did you ask the captain for this advance?
A. I told captain that I would like to have some advance and runner was in Consul's office and he said "we must have a month's advance or we cannot let him go."

Cross-examination.

By Mr. Hupper:

Q. You were on this vessel about six weeks while in port?
A. Close to two months.
Q. About that time?
A. Yes, all the time she was there.
Q. She was discharging and loading cargo?
A. Yes.
Q. How many men on board?
A. Sometimes 4, sometimes 5.
Q. What vessel did you go to Buenos Ayres on?
A. Norwegian vessel; I forget the name.
38 Q. When did you arrive these?
A. About one week before I went to Tommy Moore's.
Q. How long had you been living at Tommy Moore's?
A. Three or four days.
Q. Did you pay your board when you left?
A. On Saturday night he took $5.00 out of me, sometimes more.
Q. What were your wages a week?
A. I think $45.00 came to about 23 pesos a week.
Q. Did Tommy Moore get you this job?
A. No, he told me to go down and see if they needed a cook. After that I went down and it happened that the cook was drunk and they wanted some one in his place.
Q. Mate told you to turn to?
A. Yes, captain wasn't on board at the time.
Q. Now then before you came on the ship you were just going to work by her while she was in port?
A. Yes.
Q. Then they dated your wages back to May 7th instead of signing you on May 10th.
A. Yes. We got paid off on Saturday night and I signed on Monday or Tuesday and captain said he would date wages back.
Q. So your wages ran from two or three days before the others?
A. Yes.
Q. You read English, don't you?
A. Yes.
Q. You read newspapers and books?
A. Sure.
Q. You take an interest in reading, keeping posted on things?
A. Sure.
Q. How old are you?

A. 40 years old.
Q. What is your nationality?
A. I was born in Germany and naturalized in Great Britain.
Q. You signed these articles?
A. Yes.
Q. You knew what you were signing, of course?
A. Yes.
Q. The Consul told you that these were articles?
A. Yes.
Q. You knew just what you signed?
A. Yes.
Q. Before you had signed articles you spoke with Tommy or his runner about the advance?
A. A. I never spoke about an advance, only in Consul's office. I asked the captain for an advance and he wouldn't give me one. He said it is too much and that he wouldn't run the risk. He asked the Consul about it and Consul said "that's done on your own risk."
Q. Did you sign a slip then?
A. No.
Q. Articles stated an advance, didn't they?
A. I don't know.
Q. You saw the articles before you signed?
A. I just put my name on.
Q. It was daylight when you signed?
A. Yes.
Q. What was it the runner said if you didn't get an advance?
A. He wouldn't let me go on ship.
Q. What did he mean?
A. Stop me from going and get some one else; they work hand and hand with the masters of the ships.
Q. Have you ever been to Buenos Ayres before?
A. Dozens of times.
Q. Do they do that down there?
A. Yes, on all ships except English, everybody else these crimps get hold of. They don't let anyone go on board a ship unless sailor makes an advance.
Q. Unless you make this advance they won't let you join, is that it?
A. Yes.

TEXAS O'BRIEN, being duly sworn, deposes and testifies as follows:

Direct examination.

By Mr. Axtell:

Q. How old are you?
A. 29.
Q. How long have you been going to sea?
A. 15 years.
Q. Do you know anything about the bark Windrush?
A. No.

Q. Never heard of her?
A. No.
Q. Have you ever been to Buenos Ayres?
A. Yes.
Q. How recently?
A. Between the 2nd and 15th of May.
Q. What year?
A. This year, 1916.
Q. What were you doing there?
A. Well, I was mostly looking for a boat to come home.
Q. How did you get there?
A. I went to the American Consul and told him I was left there by the Yacht Cypress and go- a job on the steamship called —— of the New England Coal & Coke Co.
Q. The Newton?
A. Exactly.
Q. How much a month?
A. Twenty-five cents a month.
Q. Is that all the wages you got on that ship?
A. I got $25.00 from the captain and $10.00 from the chief engineer.
Q. How long did you work on that ship?
A. I think 18 or 21 days, I don't know which. 21 days.
Q. You were a regular member of the crew?
A. Yes.
Q. Why was it that you were signed on at only 25 cents?
A. For the simple reason that there were so many people
41 applying for jobs that they couldn't accommodate them. I came quick and ask for a job and they put me on.
Q. They paid you wages voluntarily?
A. No compulsory.
Q. You say that they only had to pay you twenty-five cents according to the articles. How did they happen to pay you $35.00?
A. That was voluntarily.
Q. They didn't agree to pay it?
A. No.
Q. Where did they pay it?
A. New York City.
Q. At the end of the voyage?
A. Yes.
Q. Did you ever hear of Tommy Moore in Buenos Ayres?
A. No, sir.
Q. Did you go to any shipping agent to get the job?
A. No.
Q. Whom did you apply to?
A. American Consul.
Q. He sent you to the ship Newton?
A. Yes, he told me to go on the S. S. Newton.

Cross-examination.

By Mr. Hupper:

Q. How long were you in Buenos Ayres befo e you got this job at 25 cents?
A. Two weeks.
Q. You went on the yacht Cypress?
A. Yes.
Q. She went to Buenos Ayres and left your there?
A. Yes.
Q. You were ashore when she left. Ashore having a good time?
A. I don't know what you call it, but I didn't have a very good time after she left. She left previous to what she was supposed to sail.
Q. You didn't desert, you wouldn't do anything like that, would you?
A. Well, I can't say whether I would *not* not, if it didn't prove what I expected I would.
42 Q. Did you desert the Cypress?
A. No.
Q. She was entirely satisfactory?
A. She was perfectly satisfactory. I was left there with just the same clothes that I stand in, because for the simple reason that she sailed before she was supposed to.

THOMAS O'KEEFE, being duly sworn, deposes and says:

Direct examination.

By Mr. Axtell:

Q. You are a seaman by trade?
A. Yes.
Q. How old are you?
A. 42.
Q. How long have you been going to sea?
A. Sometime I go for a couple of weeks and then stay ashore again.
Q. You are an American citizen?
A. Yes, born in New Jersey.
Q. How long have you been going to sea?
A. Off and on 26 years.
Q. You don't know the bark Windrush, do you?
A. No.
Q. Have you ever been in Buenos Ayres?
A. Yes.
Q. How recently?
A. I went there about the 9th of September.
Q. This year?
A. Yes.
Q. What ship?

A. My own.
Q. How did you get the job on the Iowan?
A. Through the American Consul.
Q. Did you pay any advance?
A. No.
Q. Did you pay any advance to anybody?
A. No.
Q. In what capacity did you join?
A. A. B.
Q. How much a month?
A. $40.00.
Q. Were your wages paid in full?
A. Yes.
43 Q. Did you ever hear of Tommy Moore?
A. Yes, I knew the old fellow and I know the young one.
Q. Who are they?
A. Shipping masters in Buenos Ayres. I know those people well; they shipped me out once about 20 years ago. Old Tommy Moore is dead now.
Q. Who runs the business?
A. His son and another fellow by the name of Bergenson.

Cross-examination.

By Mr. Hupper:

Q. How long had you been in Buenos Ayres before sailing on the Iowan?
A. About five days.
Q. You had sufficient money with you?
A. I didn't have any.
Q. Where did you stay for five days?
A. At Frank Brown's. The American Consul put me there.
Q. Did you pay him?
A. No, the American Consul did.
Q. Do you know how much?
A. Two pesos a day.
Q. How much is that?
A. $11.45 to $5.00 American money.
Q. And he paid him two of those?
A. Yes.
Q. You say you knew Tommy Moore quite a few years ago?
A. Yes.
Q. Had you seen him lately?
A. No, he is supposed to be dead.
Q. Did you see the young fellow when you were in Buenos Ayres this last time?
A. Yes.
Q. They do a big business shipping men?
A. Yes, mostly for schooners, not for steamships.
Q. Not for steamships at all?
A. No.

44 United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," Her Tackle, Apparel, etc.

Testimony of Fred Neilsen and William Robur, taken de bene esse before Maurice K. Wise, a notary public, on the 14th day of September, 1916, at No. 1 Broadway, Borough of Manhattan, City of New York.

Silas B. Axtell, for libelants;
Burlingham, Montgomery & Beecher, for claimants;
Mr. Cormack, of counsel.

Signing, certification and filing of minutes is hereby waived. Copy of deposition to be served on proctors for claimants. Minutes to be a taxable cost; same being taken by Lillian Zimmerman, a stenographer.

45 FRED NEILSON, being sworn, by Maurice K. Wise, a notary public, testifies as follows:

Direct examination.

By Mr. Axtell:

Q. You were a member of the crew of the Windrush?
A. Yes.
Q. In what capacity?
A. A. B.
Q. When and where did you join her?
A. In Buenos Ayres on the 10th day of May I believe.
Q. Same date as other men?
A. Same date.
Q. Did you sign before the Consul?
A. Yes.
Q. How much a month?
A. $25.00.
Q. Did you have any advance?
A. No.
Q. Did you sign for an advance?
A. No.
Q. Are you positive?
A. Yes.
Q. Didn't you sign an advance note for a month's pay?
A. No.
Q. How much did you receive for that voyage from the master?
A. Around $20.00.

Q. How much was deducted from you- wages by the master?
A. He deducted $25.00.
Q. What was that for?
A. I suppose he was taking the advance out.

By Mr. Cormack: I object to the conclusion of witness as to why the deduction was made.

Q. What advance do you refer to?
A. He thought we got an advance but we never got any; he said he gave us an advance but we never got it.
Q. Are you positive you didn't sign any note?
A. Yes.
Q. Didn't you sign a note for Tommy Moore?
A. I signed a blank piece of paper. Just as I got in there, they had some kind of book there and nothing on it at all and he said if you want to take this ship you get $25.00 a month but you got to sign so I signed. It was not an advance note or anything
46 like that. I don't know what it was.
Q. Where did you sign that?
A. In Tommy Moore's house.
Q. Had you been sleeping in his house?
A. No.
Q. Get any meals there?
A. No.
Q. How did you happen to go there?
A. I got paid off on Monday from another ship and on Wednesday night I was sitting in a saloon in Elbhall and drinking a glass of beer and he asked me if I wanted a job.
Q. Who did?
A. I don't know.
Q. What did you do there?
A. I said yes, and he said "all right, be over here tomorrow morning."
Q. Where?
A. Tommy Moore's.

By Mr. Cormack: I move to strike out statement of witness as to what other man said as witness is not able to identify other man.

Q. Did you see the other man there?
A. Yes.
Q. Same man you saw in the saloon?
A. Yes.
Q. Did you see Tommy Moore personally?
A. No.
Q. Did the Consul have this paper that you signed when you were there?
A. No.
Q. Did you hear any conversation between the captain and the Consul about this note?

A. The Consul said I could have $25.00 advance and $25.00 a month and he asked me whether I wanted to sign and I said yes. Then we signed and I said "what about an advance," and we saw the skipper coming from the Consul in an automobile and that was the last we saw of the skipper until we came on board.

Q. Did you ask for the advance then?

A. No. We thought the law is not supposed to give it
47 and he did not want to give it; or maybe he changed his mind.

Q. That is why you didn't ask for it?
A. Yes.
Q. When you came to New York did you sign off the articles?
A. Under protest.
Q. Did you make a demand on the captain for $25.00?
A. Yes.
Q. And he refused to give it?
A. Yes.
Q. Then you put the case in my hands?
A. Yes.
Q. You are willing to accept the advance without any waiting time or other charge before suit was started?
A. Yes.
Q. Are you willing to accept wages now without waiting time?
A. No.
Q. Are you willing to accept it with interest at 6%?
A. No.

By Mr. Cormack: I object to this question as it is entirely immaterial.

Q. You have alleged in your libel that you claim waiting time under Section 4529 of the United States Revised Statutes?
A. Yes.
Q. You know the contents of that statute?
A. Yes.
Q. You claim one day's waiting time for every day you waited?
A. Yes.

Cross-examination.

By Mr. Cormack:

Q. Was this your first time in Buenos Ayres?
A. No, I have been down there since 1912.
Q. How many times?
A. I was sailing out from Buenos Ayres.
Q. Did you always secure your position through Tommy Moore?

A. Never.
48 Q. Did you ever pay anyone else for securing a job for you?
A. No.

Q. Who gave you the paper to sign at Tommy Moore's house?
A. Benson.

Q. What did he say the paper was?
A. Well I asked him, and he said "we want this so we will have all the names and you got to sign this if you want to go this afternoon."
Q. Was there anything written on the paper at that time?
A. No.
Q. $25.00 didn't appear on the paper?
A. No.
Q. Anything at all written on the paper?
A. He put $25.00 gold.
Q. Where did you stop in Buenos Ayres?
A. The Fonda.
Q. How much money did you have when you secured your position on the Windrush?
A. About $25.00.
Q. How did you look for a job before you saw Benson in the cafe?
A. I wasn't looking for a job at all.
Q. Did you at any time ask anyone else to get you a job on the Windrush?
A. Yes. I asked sailor who was on board before and he shipped again that trip and I was going to skipper and he said it was no use of going to skipper, because they send them all to the boarding house.
Q. You never asked skipper for a job or went on the Windrush to look for it?
A. No.
Q. Were the articles read to you before you signed?
A. Yes.
Q. You knew that you were signing articles at the time you signed them?
A. Yes.
Q. Did you sign articles after the other men or before?
A. There were about 5 or 6 ahead of me.
Q. Was the Consul present when you signed?
A. I don't know the Consul; maybe he was there.
49 Q. You don't know Moore parsonally?
A. No.
Q. Was Benson in room when you signed articles?
A. Yes.
Q. Did you pay Tommy Moore anything?
A. No.
Q. Did you make any complaint because you didn't receive any advance before you left Buenos Ayres?
A. No.
Q. When did you first go on the Windrush after signing articles?
A. Next morning at 7 o'clock.
Q. You simply went on the Windrush before you started to work at 7 o'clock?
A. Yes. I went on board at 6 o'clock and started in at 7 o'clock.
Q. Did Benson say anything to you about paying him for getting you this job?
A. No.

Q. Is it customary to pay men when they get you a job in Buenos Ayres?
A. I don't know.
Q. Did you ever pay anyone other than Tommy Moore?
A. Yes, once.
Q. How much did you pay them?
A. Five crowns.
Q. Did you ever have any deduction made out of your wages to pay any men for getting job for you?
A. No, I have been sailing out of the States here and never had a cent taken off my wages.
Q. When you went to Tommy Moore did you know he was in the business of getting jobs for men on ships?
A. Yes.
Q. You understood at that time that you would have to pay him in case he secured job for you?
A. If he had said anything I would have given him a few dollars, but he never said anything so why should I?
Q. When the captain asked you in the Consul's office if you wanted an advance and $25.00 a month, what did you answer him?
A. The Consul got hold of the articles and said "you men get a month's advance and $25.00 a month" and he asked us if we wanted to sign them and we said yes and captain never said anything about an advance.
Q. Consul said you would get an advance and $25.00 a month?
A. Yes.
Q. After Consul said that you understood that you were going to get an advance?
A. Sure.
Q. You didn't ask for $25.00 at any later time?
A. As soon as we were through the captain left and I didn't seem him until we came on board.

By Mr. Cormack: I move to strike out so much of the answer as relates to reasons why he did not later ask for an advance.
Q. How long was it from the time you signed paper in Tommy Moore's house until you signed articles?
A. About four hours.
Q. Did it appear on the articles that you signed, that you were to receive $25.00 advance and $25.00 a month?
A. I think so, but I am not sure of it, I wouldn't swear to it.

WILLIAM ROBUR, being duly sworn, deposes and says:

Direct examination.

By Mr. Axtell:

Q. You signed articles on the Windrush?
A. Yes.
Q. As A. B.?
A. Yes.

Q. Same time as other men?
A. Yes.
Q. At what wages?
A. $25.00 gold a month.
Q. How did you get your job on the ship?
A. I asked the captain of the Windrush for a job.
51 Q. Did he give you one?
A. No, he said "go to Tommy Moore."
Q. Did you see the captain personally?
A. Yes.
Q. A short man?
A. Yes. Captain Roberts is his name.
Q. You have sailed on the vessel so you know him?
A. Yes, captain from Dunkney, a Norwegian bark, sent me over there. He was asking him for a job for me and captain of the Windrush told him that I could come on board there.

By Mr. Cormack: I move to strike out so much of the answer of the witness as relates to what the captain of the Dunkney said.

Q. Did you sign for an advance?
A. I went on board again and chief mate told me that captain went away and I met captain on the street and I asked him again for a job and he said "why didn't you go to Tommy Moore's house," and I said I haven't got anything to do with Tommy Moore, I don't know where he lives. Then he said "it is better that you go up there tomorrow morning and ask him if you can come on this ship."
Q. What did you say?
A. All right.
Q. Did you go up there?
A. Yes.
Q. When?
A. The same evening.
Q. Did you see Tommy Moore?
A. I didn't see Tommy Moore; I saw another fellow there.
Q. Did you ever see him again?
A. The morning I was there.
Q. Did you sign any paper?
A. When I was there for the first time he asked me if I wanted to go on the Windrush and I said "yes." He said "well,
52 be here tomorrow morning about 9 o'clock," and I said "all right." The next morning I came and he said "do you want to go on the Windrush" and I said "yes" and he said "we will go to Consul about 11 o'clock" and then some other fellows came and he called us in altogether and he said "here you have to sign."
Q. Did you sign at the same time this man Neilson signed?
A. Yes.
Q. What did you sign?
A. I don't know; it was a blank piece of paper with $25.00 in gold on it.

Q. Anything written in Spanish that you couldn't read?
A. I don't know.
Q. Was it in a book?
A. He had a book in there and small piece of paper.
Q. You signed it?
A. Yes.
Q. Then you went to Consul's office?
A. Yes.
Q. Were the articles read to you?
A. Consul said "you fellow sign for $25.00 gold and $25.00 advance." That's all he said.
Q. Did he read over the articles?
A. No.
Q. You knew what you were signing?
A. Yes. I read them before that.
Q. You read other articles?
A. I read the articles from the United States.
Q. You didn't read these articles before?
A. No.
Q. You never did read them?
A. No.
Q. Did the captain deduct money from your wages?
A. No.
Q. Did you get an advance?
A. No.
Q. Were you paid any money in Buenos Ayres by Tommy Moore or captain?
A. No.
Q. Get any board or lodging from Tommy Moore?
A. No.
Q. Any tobacco?
A. No.
Q. How much money did you receive in New York?
A. About $23.00.
53 Q. You worked on ship how long?
A. About two months and four days.
Q. How much money did the captain keep out of your wages?
A. $25.00.
Q. Did he say what it was for?
A. Advance.
Q. Did you accept that?
A. No.
Q. Did you sign off articles?
A. I signed, but I told the commissioner that I don't want the money and he said "you will get your rights any way."
Q. Then you retained me to bring suit?
A. Yes.
Q. You signed papers here and you are claiming waiting time at the rate of one day's pay for every day you waited after 48 hours?
A. For every day two days' waiting time.

Q. Are you now willing to accept what the company is now willing to pay you, $25.00 with interest?

By Mr. Cormack: I object to this question as immaterial.

A. No. I want my $25.00 and two days' pay for every day that I waited.

Q. You want to go to court on that proposition?

A. Yes.

Cross-examination.

By Mr. Cormack:

Q. How many times have you been in Buenos Ayres?

A. First time I went down there I lived there for two months.

Q. You didn't spend any time in Buenos Ayres looking for work?

A. No.

Q. You went from the Dunkey right on the Windrush?

A. No.

Q. Where did you stay in the meantime?

A. 2017 Mendoza Street.

54 Q. When you went to Tommy Moore you knew he was in the business of getting jobs for men on vessels?

A. No, that was the first time I went there.

Q. Did you understand that you were to pay Tommy Moore for getting you a job?

A. No.

Q. Did you pay Tommy Moore anything?

A. No.

Q. Did he state that if you didn't pay him anything then he would get advance from your wages?

A. No.

Q. When you signed articles it appeared that you received an advance, didn't it?

A. $25.00 gold written on it, nothing else.

Q. Were you in the room when the articles were read to the other men?

A. Yes.

Q. You heard articles read to other men?

A. Yes.

Q. Were the Consul and captain present when you signed the articles?

A. Yes.

Q. Tommy Moore there?

A. No.

Q. Did any one say anything to you about receiving an advance when you signed the articles?

A. No.

Q. How long after you signed articles did you first go on the Windrush?

A. Next morning.

Q. When did you start work?
A. Next morning.
Q. You didn't expect to pay anything for obtaining your job on the Windrush, did you?
A. No, certainly not.
Q. How much money did you have when you signed articles on the Windrush?
A. About thirty pesos.
Q. What port did you sail from on your way to Buenos Ayres?
A. New York.

55 *Opinion.*

United States District Court, Eastern District of New York.

May 25, 1917.

PAUL NEILSEN et al.

vs.

SAILING SHIP "RHINE."

JOHN HARDY et al.

vs.

BARKENTINE "WINDRUSH."

Silas B. Axtell, for Libellants.
Burlingham, Montgomery & Beecher (Roscoe H. Hupper), for Claimants.

In the first case Paul Neilsen and nine other seamen sue for the recovery of wages claimed to be due them from the bark Rhine. It appears that they shipped on the American bark Rhine, at Buenos Ayres, Oct. 7, 1916, for a voyage to New York, at the rate of $25 per month. It is stipulated that the shipping of seamen on sailing vessels at Buenos Ayres is controlled by certain shipping masters, to one of whom the libellants, in accordance with the usual custom and as a means of securing employment, signed a receipt or advance note for one month's wages. These advance notes were presented to the American Vice-Consul at Buenos Ayres before the
56 libellants signed the articles, were by him noted on the articles and, in the presence of the libellants, directed to be paid on account of the wages of the respective libellants. It was further stipulated that in directing the master of the Rhine to honor such advance notes, the Consul was acting in accordance with Section 237 of the Consular Regulations of the United States. When the bark arrived at New York the libellants were paid the wages earned, less the $25 advanced. They now seek to recover the sum thus deducted, by virtue of the terms of Section 10 (*a*) of the Act of March 4, 1915, entitled "An Act to Promote the Welfare of American Seamen in the

Merchant Marine of the United States," which declares such advances to be unlawful and of no effect.

The facts in relation to the case of the Barkentine Windrush differ from the above only in respect of the fact that the advance notes are not in evidence, but are noted on the articles.

The sole question involved is whether the statutory provision referred to applies to advances made by American vessels in foreign ports. The original enactment prohibiting advances dates from 1884 (Act of June 26, 1884, c. 121, §10). It was amended three times between that date and the Act of March 4, 1915 (namely, by the Act of June 19, 1886, c. 421, §3; the Act of Dec. 21, 1898, c. 28, §24; the Act of Apr. 26, 1904, c. 1603, §1), but without material change in any respect here involved.

In Patterson v. Bark Eudora, 190 U. S., 169, the Supreme Court of the United States held, in 1903, that the prohibition applied to advances made by a foreign vessel in an American port.
57 But there have been only two cases since the original enactment in 1884 which cover the issue now raised. In 1884 Judge Addison Brown held in the State of Maine, 22 Fed., 734, that this section did not apply to advances made by an American vessel within a foreign jurisdiction. On the other hand, Judge Ervin, sitting in the Southern District of Alabama, has recently held in Koskiner v. The Imberhorne (not yet reported) that the section applies to advances made in foreign ports (even by foreign vessels). It would serve no useful purpose to recapitulate the particular considerations urged in support of the opposing conclusions. The arguments in support of one construction of the statute are not susceptible of a conclusive answer by the advocate of an opposing construction; a final conclusion can be based only upon a preponderance of the considerations which serve to disclose the intent of Congress. I shall hold that the statutory provision in question applies to the situation presented here, and that the advances in issue, although made in a foreign port, having been made by vessels of the United States, were unlawful and may be recovered by the seamen.

Decree for libellants in each case, with costs, for the amount of the advance payments deducted. Under the circumstances the claim to the penalty specified in U. S. Rev. St., Sec. 4529, is denied.

VAN VECHTEN VEEDER, *U. S. J.*

58 *Final Decree.*

At a Stated Term of the United States District Court Held in and for the Eastern District of New York, at the Post Office Building, in the Borough of Brooklyn, City of New York, on the 3rd Day of September, 1917.

Present: Hon. Thomas I. Chatfield, District Judge.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," Her Tackle, Apparel, etc.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the proctors for the respective parties, and due deliberation having been had and the Court having filed its opinion, it is now

Ordered, adjudged and decreed, by the Court, that the libellants recover against the Barkentine Windrush her tackle, apparel, etc., the sums set opposite their names, as follows:

John Hardy	$25.00
Fred Nielsen	$25.00
August Nielsen	$25.00
Wilhelm Rohr	$25.00
Paul Udsen	$25.00
John Broather	$20.00
F. Christensen	$25.00
Johannes Heimo	$25.00
Arthur Goldstein	$40.00

59 together with costs and disbursements, taxed in the sum of $74.90, making in all the sum of $309.90, and that the said Barkentine Windrush be condemned to pay the same, and it is

Further ordered, that unless an appeal be taken from this decree within ten days, the time limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of the said Barkentine Windrush, do cause the engagements of their stipulators to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of their said stipulation.

Enter,

THOMAS I. CHATFIELD, *D. J.*

60 *Notice of Appeal.*

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," Her Tackle, Apparel, etc., SHEPARD & MORSE LUMBER COMPANY, Claimant.

SIRS: Please take notice that the claimant herein hereby appeals to the United States Circuit Court of Appeals, Second Circuit, from the final decree in the above action, entered in the office of the Clerk of the United States District Court for the Eastern District of New York on the 19th day of June, 1917, and from each and every part of said decree.

Dated, New York, September 20, 1917.

Yours, etc.,

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

27 William Street, Borough of Manhattan, City of New York, N.Y.

To: Silas B. Axtell, Esq., Proctor for Libellant, 1 Broadway, New York City; Percy G. B. Gilkes, Esq., Clerk, U. S. District Court, Eastern District of New York, Brooklyn, N. Y.

61 *Assignment of Error.*

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER CO., Claimant.

The claimant, Shepard & Morse Lumber Company, hereby assigns error in the final decision and decree of the District Court.

1. In that the Court held that section 10 (a) of the Act of March 4, 1915, prohibited the payment of advance wages to the seamen within the territorial jurisdiction of the Argentine Republic.

2. In that the Court held that the wages paid in advance at Buenos Aires were unlawfully paid and could be recovered by the libellants.

3. In that the Court did not hold that the libellants had been pair their full wages and were entitled to no recovery in this suit.

4. In that the Court made a decree in favor of the libellants.

5. In that the Court did not dismiss the libel.

BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

62 *Stipulation as to Record.*

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER CO., Claimant.

It is stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above entitled suit, as agreed on by the parties.

Dated, New York, October —, 1917.

SILAS B. AXTELL,
Proctor for Libellants.
BURLINGHAM, MONTGOMERY & BEECHER,
Proctors for Claimant.

63 *Clerk's Certificate.*

United States District Court, Eastern District of New York.

JOHN HARDY et al., Libellants,

against

BARKENTINE "WINDRUSH," SHEPARD & MORSE LUMBER CO., Claimant.

I, Percy G. B. Gilkes, Clerk of the United States District Court for the Eastern District of New York, do hereby certify that the foregoing is a true transcript of the record of the District Court in the above entitled suit as agreed on by the parties.

In testimony whereof I have caused the seal of the said Court to be affixed at the City of New York this — day of October, in the year of our Lord, One thousand nine hundred and seventeen and the Independence of the United States the One hundred and forty-second.

PERCY G. B. GILKES, *Clerk.*

64 United States Circuit Court of Appeals for the Second Circuit, October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

BARKENTINE "WINDRUSH," Her Tackle, etc., SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.

PAUL NEILSON et al., Libellants-Appellees,

v.

SAILING SHIP "RHINE," Her Engines, etc., RHINE SHIPPING COMPANY, Claimant-Appellant.

Appeals from the District Court of the United States for the Eastern District of New York.

Appeals in Admiralty from Decrees Entered in District Court for the Eastern District of New York.

Both the craft named are vessels of the United States, within the meaning of that phrase as used in the statutes affecting ships
65 and seamen. In 1906 both were at Buenos Ayres, the Windrush in May and the Rhine in October; both wanted crews, and neither could get one (as is stipulated in writing) "except by agreeing to pay one month's wages in advance." This means, as is fairly shown by evidence, that the keepers of sailors' boarding houses, commonly known as "crimps" have in that port such control of seamen, that no master can get a crew except by applying to them.

Both vessels got crews through a crimp; of the men shipped some had actually stayed with the boarding master, or obtained supplies from him or both; others had merely gone to him as a means of finding employment; all however were treated alike, viz: taken before the United States Consul, and signed on the articles, each man giving to the boarding master an advance note for one month's wage, the payment of which was duly noted. All the men so shipped knew what they were doing, and apparently regarded it as the custom of the port and a common incident of their trade; so undoubtedly did the master; nor is there any evidence that the captain or owner profited directly or indirectly by the transaction. They or their agents paid the advance notes before the ship left Buenos Ayres.

On arrival at New York, the libellants refused to recognize the charges or deductions, and brought suit for a month's pay apiece, as for so much wages wrongfully withheld. The court below awarded the amount claimed, and claimants took these appeals,—which were argued together, the questions raised being identical.

Roscoe H. Hupper, for Appellants.
Silas B. Axtell, for Appellees.

HOUGH, *C. J.*:

The facts of these cases are in all material aspects those recited in
The State of Maine, 22 F. R., 734. Judge Addison Brown
66 there gave judgment as to whether the then Seaman's statute, commonly known as the Dingley Act (June 26, 1884; 23 Stat., 55) entitled libellants such as these to a recovery; the present question is whether (assuming the correctness of the decision cited) more recent legislation, commonly known as the La Follette Act (March 4, 1915; 38 Stat., 1168) requires a different ruling.

The material words of the statutes may be put in parallel thus (some immaterial phrases being omitted or shortened):

1884.	1915.
It is hereby made unlawful to pay any seaman wages before leaving the port at which he may be engaged, in advance of the time when he has actually earned the same, or to pay such advance to any other person, or to pay any remuneration, (to one not authorized by Act of Congress) for shipment of seamen.	It is hereby made unlawful to pay any seaman wages in advance of the time when he has actually earned the same, or to make any order or note therefor to any other person or to pay any person for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.
Any person paying advance wages, or such remuneration shall be deemed guilty of a misdemeanor, and punished by fine and (at option of the court) imprisonment.	Any person violating the foregoing shall be deemed guilty of a misdemeanor and punished by fine, and (at option of the court) imprisonment.
The payment of such advance wages, or remuneration, shall in no case absolve the vessel from full payment of wages after they shall have been earned, and be no defence to a libel for recovery of wages.	The payment of such advance wages on allotment shall in no case absolve the vessel from full payment of wages after they shall have been earned and shall be no defence to a libel for recovery of wages.
67	
This section shall apply as well to foreign vessels as to vessels of	If any person shall receive from any seaman any remuner-

the United States, and any foreign vessel violating the same shall be refused a clearance.

ation for providing him with employment, such person shall be deemed guilty of a misdemeanor and punished with fine or imprisonment.

This section shall apply as well to foreign vessels, while in waters of the United States, as to vessels of the United States, and any foreign vessel violating the same shall be refused a clearance.

The master, &c., of any vessel (domestic or foreign) seeking clearance from a port of the United States shall present his shipping articles at the office of clearance,—and none shall be granted unless the provisions of this article have been complied with.

The case of the State of Maine held that this portion of the statute of 1884 had no application to the employment of seamen by American vessels in foreign ports. That it was well decided we have no doubt, agreeing as we do with the reasons assigned, and considering the intellectual authority of a decision by that Judge of the highest.

The State Department, which through the Consuls, is charged with oversight of shipment of seamen abroad, accepted the ruling, and embodied it (with due reference to the decision) in the Consular Regulations, Sec. 237,—nor did the passage of the Act of 1915 produce any change in departmental instructions; what governed the action of the Consul at Buenos Ayres, when these libellants were shipped, was the rule of The State of Maine.

68 The only other interpretation of the Dingley Act thought instructive here is The Eudora, 190 U. S., 169, holding the statute applicable to foreign vessels in American ports, mainly on reasoning more elaborately set forth in Wildenhus' case, 120 U. S., 1, i. e. that any vessel and those on board her are subject to the civil and criminal law of the country into whose ports they come,—such subjection is one of the implied conditions of entry, which is a favor and not a right.

Unless there has been a change in the legal content of the statute, its interpretation must remain unchanged. So far as the language above given is concerned, there is but one change that can be relied on, i. e. that the application of the act to foreign vessels is expressly limited to waters of the United States, from which it is argued that the application to domestic vessels must be universal.

Of this it may be said, that by the same train of reasoning, some significance must be given to the section regarding clearances, in respect of which for domestic ships, the Act of 1884 said nothing; must it then follow that prior to 1915 vessels of the United States

violating the statute were necessarily entitled to clearance? Such a contention could not be made.

Indeed the argument for libellants proceeds mainly and frankly on the ground that the Act of 1915 is in its entirety so obviously remedial, that by it the status of seamen has been so radically changed, and the rigidity of their engagements so greatly relaxed, that it must have been intended to make the statute extraterritorially operative, and uplift sailors by putting on their employers the cost of a rascally way of doing business, over which this country has no direct jurisdiction.

Undoubtedly the methods of shipment exhibited in this record are vile, and it may be admitted as within legislative power to improve the social customs of a contract breaker, by encouraging the act of breach; but we are bound by what Congress did as expressed in the words employed, having recourse for that purpose to "the whole context of the statute" (Johnson vs. Southern Pacific Co., 69 196 U. S., 1), and this is true even when the law is both remedial and penal, but with the "design to give relief more dominant than to inflict punishment."

We find no words in the entire act rendering the particular kind of relief here sought, certainly within the legislative intent or meaning. We have not before us any reports of congressional committees, which however may be consulted only to ascertain motive (McLean vs. United States, 226 U. S., 374).

There are however some rules of law which the legislature must have intended by the words of this act to overset, if the libellants are entitled to a decree.

This is an amendment to existing law, and the presumption is that the same words used therein have the meaning acquired by prior judicial construction (United States vs. Trans-Missouri Ass'n, 58 F. R., at 67). In every doubtful case, contemporaneous (Houghton vs. Payne, 194 U. S., 88) and departmental (United States vs. Cerecido &c. Co., 209 U. S., 337) construction is entitled to weight, when the words of a statute get before a court. That the present act is remedial is admitted, so was that of 1884, but both are also plainly penal. That remedies of the kind here demanded by libellants are more in favor now than in 1884, is true enough; but words have not necessarily changed their ordinary meaning, and the rules of statutory construction remain unaltered. The remedial and penal portions of the part of the statute under consideration cannot be separated, if what these ship masters did in Buenos Ayres was not lawful, it was unlawful, and a misdemeanor was committed. If it be possible now and in this country to enact a law making a crime of something done by an American citizen in a foreign land (Rex vs. Sawyer, 1 C. & K., 101) every and the strongest presumption is against such construction (American, &c. Co. vs. United Fruit Co., 213 U. S., 347).

The absurdity of considering the ship captains indictable is not denied; therefore the contention becomes this, that this executed contract must be set aside, because the statute in effect declares it repugnant to the "policy and morality" of the people of the United States.

70 We discover no consensus on this point of morals in the written law, there is no evidence on the subject, and the rule appealed to, ordinarily affects only executory contracts. The situation here is this, libellants demand a part of their wages in accordance with the law of the United States; respondents answer,—we paid you that part in Argentine in accordance with the law of that country; libellants reply the law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain unquestioned legislative order; and such order cannot be discovered in this statute.

In The Eudora and State of Maine (supra) a subsidiary reason for the harmonious construction there given to the Act of 1884, was that the announced rulings put foreign and domestic vessels on the same footing. That doctrine also was presumptively before Congress in passing the later statute. The ruling made below gives foreign vessels an advantage, certainly if (e. g.) the voyage is from one foreign port to another. No intent to do this is perceivable in the Act.

We have not overlooked The Imberhorne, 240 F. R., 830, and The Talus, 242 F. R., 954. In so far as they do not harmonize with the foregoing, we differ.

Decree reversed, and causes remanded with directions to dismiss the libels.

71 United States Circuit Court of Appeals for the Second Circuit, October Term, 1917.

Nos. 160-161.

Argued January 23, 1918; Decided February 14, 1918.

Before Ward and Hough, Circuit Judges, and Learned Hand, District Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

BARKENTINE "WINDRUSH," Her Tackle, etc., SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.

PAUL NEILSON et al., Libellants-Appellees,

v.

Sailing Ship "RHINE," Her Engines, etc., RHINE SHIPPING COMPANY, Claimant-Appellant.

Appeals from the District Court of the United States for the Eastern District of New York.

LEARNED HAND, *D. J.* (dissenting):

If Section 10 (a) had not been amended in the clause here in question, I should have felt bound by the construction which Judge

Brown had put upon it in The State of Maine, 22 Fed. R.,
72 903, under the well-settled rule that a prior accepted interpretation of the statute is incorporated into its reenactment. Moreover, I think that Judge Brown's decision was certainly right at the time he made it. His fourth reason for excluding American ships from the operation of the statute while in foreign ports seems to me to be unanswerable. The statute did not discriminate, as he says, between foreign vessels and those of the United States and it was necessary to give the general language of the statute the same application to one class as to the other.

Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in Patterson v. Bark Eudora, 190 U. S., 169, held that foreign vessels were bound, and obviously only while here. There was therefore not the slightest reason when amending the statute to add the clause, "while in waters of the United States," in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase, "foreign vessels." If the statute had read "as well to foreign vessels as to vessels of the United States, while in the waters of the United States," there could have been no doubt, but the limitation by its position directly affecting one class seems to me to give the other its general meaning, unless there was good contrary reason in the context.

I can see no reason in the context for such a limitation. Of course it results in some extra-territorial operation of the statutes, but only as regards vessels of the United States and we are used enough to statutes which assume to do that. It would not strain the interpretation of a statute to make it apply to any act done on board ship. It is true, these acts were done ashore, but they were to engage crews who should perform all their services in a United States ship; they were a condition upon those services and touched them as closely as possible. When performed by an American master, at least, not to consider an owner, no valid distinction in the purpose of the statute seems to me to be found in the locus of the act. The penalties
73 against "crimps" in foreign countries stand upon a different footing; they are not associated with United States vessels and subject normally to the laws of the United States.

Again it is said that the provision making compliance with the statute a condition on clearances shows an intention to limit the application of the statute. Yet this touches only the remedy, and it would be a hard rule which limited the substance, because the remedy could not in the nature of things be coextensive with its general application. No inference seems to me justified from such a consideration.

Finally, the claimant insists that it puts United States vessels at a disadvantage in foreign ports. In such countries as do not protect their seamen against this form of exploitation, this is doubtless true, but the provision itself presupposes that the seamen are at an economic disadvantage. The initiative in all such efforts to impose a standard of wages bears at first against local industry. If it is not undertaken, all remedies must wait till other nations join. Granted

the supposed injustice of the practice, the ships or the men must therefore suffer till the evils of the practise get general recognition. The incidental burden on trade may conceivably not have been thought of equal moment with the putative welfare of the crews. In any case it seems to me that such considerations are beyond the proper cognizance of courts of law. Surely we have no right to assume that the interest of the state depends more upon the welfare of one of these conflicting economic classes than the other.

I dissent.

74 At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post Office Building in the City of New York, on the 25th day of February, one thousand nine hundred and eighteen.

Present:

Hon. Henry G. Ward,
Hon. Charles M. Hough,
Circuit Judges.
Hon. Learned Hand, District Judge.

JOHN HARDY et al., Libellants-Appellees,

v.

BARKENTINE WINDRUSH, Her Tackle, etc., SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the decree of said District Court be and it hereby is reversed with costs and cause remanded with instructions to dismiss the libel.

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

H. G. W.
C. M. H.

75 [Endorsed:] United States Circuit Court of Appeals, Second Circuit. John Hardy et al., v. Barkentine "Windrush." Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Feb. 25, 1918. William Parkin, Clerk.

76 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing

pages, numbered from 1 to 75 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of John Hardy et al., against Barkentine "Windrush" as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 21st day of March in the year of our Lord One Thousand Nine Hundred and Eighteen and of the Independence of the said United States the One Hundred and Forty-second.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*

77 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit, Greeting:

Being informed that there is now pending before you a suit in which Barkentine "Windrush," Shepard & Morse Lumber Company, Claimant, is appellant, and John Hardy et al. are appellees, which suit was removed into the said Circuit Court of Appeals by virtue of an appeal from the District Court of the United States for the Eastern District of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States, do hereby command you
78 that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand nine hundred and eighteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

[Endorsed:] File No. 26404. Supreme Court of the United States, No. 937, October Term, 1917. John Hardy et al. vs. Shepard & Morse Lumber Company, Claimant of the Barkentine "Windrush." Writ of Certiorari. United States Circuit Court of Appeals, Second Circuit. Filed Apr. 8, 1918. William Parkin, Clerk.

79 United States Circuit Court of Appeals for the Second Circuit.

JOHN HARDY et al., Libelants-Appellees,

against

BARKENTINE "WINDRUSH," SHEPARD AND MORSE LUMBER COMPANY, Claimant'-Appellants.

It is hereby stipulated, by and between the proctors for the respective parties hereto, that the transcript of record on file in the office of the clerk of the United States Supreme Court, may be taken as a return to the writ of certiorari in the above entitled action.

Dated, New York, April 8th, 1918.

SILAS B. AXTELL,
Proctor for Libelants-Appellees,
BURLINGHAM, VEEDER, MASTER & FEARY,
Proctors for Claimant'-Appellants.

80 To the Honorable the Supreme Court of the United States, Greeting:

The record and all proceedings whereof mention is within made, having lately been certified and filed in the office of the clerk of the Supreme Court of the United States, a copy of the stipulation of counsel is hereto annexed and certified as the return to the writ of certiorari issued herein.

Dated, New York, April 9th, 1918.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN,
Clerk of the United States Circuit Court of Appeals for the Second Circuit.

81 [Endorsed:] 937/26404. United States Circuit Court of Appeals, Second Circuit. John Hardy et al. v. "Windrush." Return to Certiorari. 1.70.

82 [Endorsed:] File No. 26404. Supreme Court U. S., October term, 1917. Term No. 937. John Hardy et al., Petitioners, vs. Shepard & Morse Lumber Co., Claimant, etc. Writ of certiorari and return. Filed April 15, 1918.

15

Supreme Court of the United States

OCTOBER TERM, 1917.

PAUL NIELSON *et al.*,
Libelants-Appellees,

against

Sailing Ship *Rhine*, RHINE SHIPPING COMPANY,
Claimant-Appellant.

[redacted]393

JOHN HARDY *et al.*,
Libelants-Appellees,

against

Barkentine *Windrush*, SHEPARD & MORSE LUMBER COMPANY,
Claimant-Appellant.

[redacted]394

MOTION FOR ADVANCEMENT.

SILAS B. AXTELL,
Counsel for Libelants-Appellees.

The Hecla Press, 67 Warren St., N. Y. Tel. 6350 Barclay.

Supreme Court of the United States

OCTOBER TERM, 1917.

PAUL NIELSON *et al.*, Libelants-Appellees, against Sailing Ship *Rhine*, RHINE SHIPPING COMPANY, Claimant-Appellant.	#936.
JOHN HARDY *et al.*, Libelants-Appellees, against Barkentine *Windrush*, SHEPARD & MORSE LUMBER COMPANY, Claimant-Appellant.	#937.

MOTION FOR ADVANCEMENT.

Now comes Paul Nielson *et al.*, libelants-appellees, and John Hardy *et al.*, libelants-appellees, in the above-entitled actions, by their counsel, Silas B. Axtell, and moves that these causes be advanced upon the docket of this court and set down for hearing at an early date to be fixed by this court upon the following reasons:

1. That these are actions brought by the respective libelants for wages against the respective American vessels. That said wages are alleged to

be due for voyages during the seasons of 1916-1917, aggregating approximately $700, in both cases. That there are some nineteen libelants in said actions, all being wage earners and American seamen.

2. That there is involved in these cases an interpretation of Section 10-A of the Seamen's Act, same being part of the Act of Congress of March 4th, 1915, Chapter 153, Section 11, 38 Stat. L., 1168-1169.

3. For the reason that a writ of certiorari has been granted herein by this court after due consideration on April 2nd, 1918.

4. For the further reason that this court has seen fit to advance for argument the case of *Dillon* v. *Strathearn Steamship Company, Ltd.*, claimant of the steamship *Strathearn*, #868, October Term, 1917, of this court, to the Summary Calendar, and has set same down for argument for October 14th, 1918.

5. For the reason that this court has seen fit to grant a writ of certiorari in the case of *Erik Sandberg et al.* v. *John McDonald*, claimant of the steamship *Talus*, #935, which involves this same statute of the United States herein to be interpreted, in its application to foreign vessels.

6. For the further reason that the questions to be determined by this court in the case of *Dillon* v. *Strathearn* are part of the same enactment of Congress, to wit: Seamen's Act of March 4th, 1915, which is an enactment having to do with the general law, usages and methods pertaining to the engagement and regulation of crews on domestic and foreign vessels engaged in commerce in the United States.

7. For the further reason that an application is now, as petitioner is informed and believes, made or about to be made for advancement in the case of *Erik Sandberg* v. *The Steamship Talus.*

8. For the further reason that the legal questions involved in these cases have a direct bearing upon the shipping of the United States, upon the regulation of contracts of employment made or to be made upon foreign and domestic vessels which are engaged in commerce with the United States.

9. For the further reason that the questions involved here are of international importance and are of a special concern to the people of the United States, as it affects the ability of American shipowners to compete on an equal wage basis with foreign shipowners.

10. For the further reason that the rights of thousands of wage earners are involved.

WHEREFORE, on account of all the foregoing reasons, and especially because enforcement of the Seamen's Act, which will be fully determined and considered in these several cases, is a novel piece of legislation, radical in its reforms and intended to give freedom to a down-trodden and enslaved class of society, your petitioners move that these causes be advanced to be heard, if possible, on October 14th, 1918, the date already set for the argument of the case of *Dillon* v. *Strathearn Steamship Company, Ltd.*, claimant of the steamship *Strathearn*, #868.

Dated, New York, April 2nd, 1918.

SILAS B. AXTELL,
Counsel for Libelants-Appellees.

Notice is hereby given that the foregoing motion will be presented to the Supreme Court of the United States on Monday, the 15th day of April, 1918, at the opening of court on that day.

Dated, New York, April 2nd, 1918.

SILAS B. AXTELL,
Counsel for Libelants-Appellees.

Service of a copy of the foregoing motion and notice is hereby admitted.

Dated, New York, April 2nd, 1918.

Burlingham, Veeder, Masten & Fea

Counsel for Appellant.

Supreme Court of the United States

.....Term, 1918.

No.....

PAUL NEILSON *et al.*,

Libelants-Appellees,

against

Sailing Ship *Rhine*,
RHINE SHIPPING COMPANY,

Claimant-Appellant.

JOHN HARDY *et al.*,

Libelants-Appellees,

against

Barkentine *Windrush*,
SHEPARD & MORSE LUMBER COMPANY,

Claimant-Appellant.

PETITION FOR WRIT OF CERTIORARI

In Error to the Circuit Court of Appeals, Second Circuit.

SILAS B. AXTELL,
Attorney for Petitioners.

The Rhein Press, 37 Warren St., N. Y. Tel. 6[illegible] Barclay.

Notice of Presentation of Petition for Writ of Certiorari.

Supreme Court of the United States

PAUL NEILSON *et al.*,
Libelants-Appellees,

against

Sailing Ship *Rhine*,
RHINE SHIPPING COMPANY,
Claimant-Appellant.

JOHN HARDY *et al.*,
Libelants-Appellees,

against

Barkentine *Windrush*,
SHEPARD & MORSE LUMBER COMPANY,
Claimant-Appellant.

PLEASE TAKE NOTICE that the annexed petition for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit will be submitted to the Supreme Court of the United

States at the opening of court on March 25th, 1918, or as soon thereafter as counsel can be heard.

Dated, March 11th, 1918.

SILAS B. AXTELL,
Counsel for Petitioners.

BURLINGHAM, VEEDER, MASTEN & FEAREY, Esqs.,
Counsel for Respondents.

Petition for Writ of Certiorari.

SUPREME COURT OF THE UNITED STATES.

JOHN HARDY *et al.*, PAUL NEILSEN *et al.*,
Libelants-Petitioners,

against

Barks *Windrush* and *Rhine*,
Claimant-Respondents.

Your petitioners John Hardy *et al.* and Paul Neilsen *et al.* respectfully show to this Court as follows:

I. Your petitioners were at the time of the commencement of this suit residents of the City of New York, and all were American seamen within the meaning of the United States statutes.

II. That your pettiioners are suing in these actions, brought *in rem,* in the United States District Court for the Eastern District of New York to recover wages earned on the American barks *Windrush* and *Rhine* respectively.

III. Petitioners respectfully show that in the action of *Hardy et al.* v. *Bark Windrush,* there are joined nine seamen, who seek to recover the sum of $25 each, or one month's wages, alleged to have been wrongfully deducted from their account of wages by the master at the completion of the voyage at New York, July 13th, 1916, except that one of the petitioners, Johana Goldstein, makes claim

for the recovery of $40, or one month's wages earned, as cook of the ship.

IV. Petitioners show that in the action of *Neilsen et al.* v. *Bark Rhine,* there are joined the claims of ten seamen, each of whom is seeing to recover wages in the sum of $25 alleged to have been wrongfully deducted from their account of wages, at the end of the voyage, at New York, on December 28th, 1916 (see p. 3 of transcript of record).

V. Your petitioners respectfully show that the month's pay deducted from each of them as alleged (a) was wrongfully deducted; (b) that the payment was unlawful; (c) that the advance notes signed, as alleged, by the respondents, at Buenos Ayres, for wages in advance of the time earned, was no defense to these actions, by reason of Section 10a of the Seamen's Act of March 4th, 1915, and Section 4611, United States Revised Statutes.

VI. All of your petitioners respectfully show that they are entitled to recover waiting time in accordance with the provisions of Section 4529 of the United States Revised Statutes as amended.

VII. Your petitioners John Hardy *et al.* respectfully show that they signed articles on the American bark *Windrush,* at the Port of Buenos Ayres, on or about May 10th, 1916, for a voyage to New York, there to be discharged and paid off. That they signed the regular articles of agreement as required by the laws of the United States before the American Consul at Buenos Ayres on said date. That these were the same articles that were taken out at New York at the commencement of the voy-

age. They went aboard said vessel directly and proceeded from the Port of Buenos Ayres within two days thereafter, and before they had earned but a small portion of the one month's wages involved.

VIII. Your petitioners John Hardy *et al.* respectfully show that some of them were engaged or hired by the master or first officer of the American bark *Windrush* on board the ship at the Port of Buenos Ayres before they went to the boarding house of Tommy Moore; that they signed the same articles that were taken out at New York at the commencement of the voyage, as required by the laws of the United States. That in some cases they were instructed by the master or mate to go first to the boarding house of Tommy Moore, and have him send them on board the ship (see Testimony, p. 33, fol. 130; p. 51, fol. 201).

IX. Your petitioners Paul Neilsen *et al.* of the bark *Rhine* respectfully show that they signed articles on the American bark *Rhine,* before the American Consul, at Buenos Ayres, on October 7th, 1916, for a voyage to New York. That within two days after signing articles at the consul's office, they proceeded with said vessel from the Port of Buenos Ayres and arrived at the Port of New York on December 28th, 1916.

X. All of your petitioners, in both cases, respectfully show that they have received all of their wages earned except for the sum of one month's wages, which has been unlawfully deducted by the owners of the respective vessels in each case; that it is claimed by the respondents herein that the

said month's wages were *assigned* to one Tommy Moore, a boarding house keeper in Buenos Ayres, by each of your petitioners. That said *assignment* was in the form of an order upon the master to pay said money to said boarding house keeper. That said order or advance was noted on the articles of the ship and made in accordance with the regulations of the Department of Commerce, as based upon the rulings made by the Treasury Department of the United States and subsequently enforced by the Department of Commerce by virtue of a decision of Judge Addison Brown in the *Matter of State of Maine,* in 1884, reported 22 Fed., 734, for a period of two years (1884-1886).

XI. Petitioners respectfully show that action was commenced in both cases shortly after the termination of said voyages, for the recovery of said wages, together with waiting time, in accordance with Section 4529 of the United States Revised Statutes. That these cases came on for hearing in the United States District Court for the Eastern District of New York before Hon. Van Vechten Veeder, District Judge, and after due consideration a decision was rendered, sustaining the rights of the libelants as alleged in their respective libels, except that no waiting time was allowed under Section 4529. Further, the Trial Court held that advances to seamen in these cases, on American vessels, were unlawful, thereby taking direct issue with the decision of Judge Addison Brown in the *State of Maine* (*supra*).

XII. All of your petitioners respectfully show that these cases were appealed by the claimants, and that they came on for argument in the United

States Circuit Court of Appeals before Judges Ward, Hough and Hand (Learned) on the 23rd day of January, 1918. That a decision was rendered on or about February 14, 1918, by divided Court, reversing the decision of the District Court, Learned Hand, *D. J.*, dissenting. The opinion of the Circuit Court of Appeals, in which Ward, *C. J.*, concurred, was written by Hough, *C. J.*

The Statute.

Important differences in the Act of 1915 and Act of 1884 are indicated by italics.

Act of June 26, 1884, c. 121, sec. 10, 23 Stat. L. 55, 56.	Act of March 4, 1915, c. 153, sec. 11, 38 Stat. L. 1168-69.
"Sec. 11. That section twenty-four of the act entitled 'An act to amend the laws relating to American seaman, for the protection of such seaman, and to promote commerce', approved December twenty-first, eighteen hundred ninety-eight, be, and is hereby, amended to read as follows:	
"Sec. 24. That section ten of chapter one hundred twenty-one of the laws of eighteen hundred eighty-four, as amended by section three of chapter four hundred twenty-one of the laws of eighteen hundred eighty-six, be, and is hereby, amended to read as follows:	
"Sec. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages *before leaving the port at which such seaman may be engaged* in advance of the time when he has actually earned	"Sec. 10 (*a*). That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to

the same, or to pay such advance	pay such advance wages, *or to make any order, or note, or other evidence of indebtedness therefor*
wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen.	to any other person, or to pay any person, for the shipment of seamen *when payment is deducted or to be deducted from a seaman's wages.*
Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than	Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than
four times the amount of the wages so advanced or remuneration so paid	*$25 nor more than $100*
and may be also imprisoned for a period not exceeding six months, at the discretion of the court. **The payment of such advance wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action**	and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. **The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit**

for the recovery of such wages: Provided, That this section shall not apply to whaling vessels: And provided further,

or action for the recovery of such wages.

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation.

(*b*) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister or children.

(*c*) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to

examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

(*d*) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine of not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

This section shall apply as well to foreign vessels as to vessels of the United States;

(*e*) *This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any mas-*

ter, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.

and any foreign vessel the master, owner, consignee or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(*f*) Under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

XIII. Your petitioners respectfully show that the questions of law involved herein, are the following:

1. Did the Circuit Court of Appeals err as a matter of law in concluding on the facts that it was impossible for the master of the barks *Windrush* and *Rhine,* to obtain crews without paying a month's wages in advance, to the crimp?

2. Did Congress intend that Section 10a of the Seamen's Act, should control and regulate the shipment of crews on American vessels while in foreign ports?

3. Shall the courts of the United States give force and effect to a contract or agreement made in a foreign jurisdiction which is contrary to the public policy of the United States?

4. Did Congress intend Section 10 of the Seamen's Act to apply to advances made on American vessels in foreign ports when action was brought by the seaman to recover the wages?

5. What significance, if any, do these words in Section 10 have:

> "The payment of such advance wages or allotment, shall *in no case,* except as herein provided, absolve the vessel or master or the owner thereof from the full payment of wages, after the same shall have been actually earned and shall be no defense to a libel, suit or action for the recovery of such wages."

6. Can the order made by the seaman upon the master to pay a portion of his wages to a person in Buenos Ayres be considered as an *executed* contract as generally understood, in view of the fact that the seaman at the same time signed an agree-

ment with the master of the ship to earn the very wages *then assigned?*

7. Does the rule applicable to *executed contracts made in foreign jurisdiction,* apply to an assignment of wages by a seaman?

8. Can a seaman make a valid assignment of wages in advance of the time earned, which are *to be earned on an American vessel?*

9. If it be decided that the assignment by the seaman of wages in advance of the time earned, be considered an *executed contract,* will such payment be recognized in the United States, in view of the declared public policy of this country as indicated by the Seamen's Act?

10. The seaman having earned his wages on an American vessel and not having released the ship for his wages, and there having been no consideration for the advance note signed by the seaman, has Section 12 of the Act of March 4th, 1915, which reads as follows, any bearing on the case:

> "No wages due or accrued to any seaman or apprentice shall be subject to attachment or arrestment from any court, and that payment of wages to a seaman or apprentice shall be valid in law, *notwithstanding any previous sale or assignment of wages or any* attachment, encroachment or arrestment thereon; AND NO ASSIGNMENT OR SALE OF WAGES OR OF SALVAGE ACCRUING THEREON, SHALL BIND THE PARTY MAKING THE SAME, EXCEPT SUCH ALLOTMENTS AS ARE AUTHORIZED BY THIS TITLE. THIS SECTION SHALL APPLY TO FISHERMEN EMPLOYED ON FISHING VESSELS AS WELL AS TO SEAMEN, ETC."

(This point was not mentioned in the opinion of the Court below.)

11. What control of protection can Congress of the United States exercise over vessels, officers and crews of the United States in absence of conflict with local mandatory law?

12. Is the public policy of the United States as to advance wages to seamen, expressed in Section 10 of the Seamen's Act?

13. To what extent, if any, can the laws of the United States protect American seamen from wrongful acts on the part of the master of a ship, while the vessel is lying in the navigable waters of a foreign nation?

XIV. And your petitioners further aver that the present cases are ones in which it is proper for the Court to issue a writ of certiorari, for the following reasons:

1. Because the decisions appealed from involve the interpretation of a statute of the United States.

2. Because the statute of the United States involved, is part of a highly remedial act, intended to benefit one particular class of individuals.

3. Because the petitioners here are American seamen and the highest degree of care is exercised by Courts of the United States in protecting their rights.

4. Because the petitioners, some twenty in number, have been compelled to work on American vessels for one month, for which they have received no actual payment.

5. Because there has been a manifest wrong done to the petitioners and no remedy has been found.

6. Because it is to the best interest of the petitioners and the people of the United States that this

statute, evidently intended to benefit a certain class of society, should be interpreted by the Court of last resort.

7. An interpretation by the Supreme Court, of this admittedly ambiguous statute, should be made, *because* there is a serious doubt as to its exact meaning. (See opinion of Learned Hand, in the Circuit Court; Judge Veeder, in the District Court, 244 Fed., 833; decision of Judge Erwin, 242 Fed., 956, and Judge Chatfield, *Delogoa, supra,* holding to view favorable to libelants and the decision of Hough, *C. J., contra.*)

8. For the further reason that it is desirable that the exact intention of Congress in framing this statute, be determined.

9. For the further reason that it is desirable to determine to what extent Congress of the United States can control the conduct of masters and crews of American vessels, while in foreign ports.

10. Because it is desirable to determine whether the relief demanded by the petitioners can be denied by a court of the United States, without giving force and effect to an executory contract or agreement which is contrary to the declared public policy of the United States?

11. Because if the contention of the petitioners are upheld an admitted evil will be remedied (see prevailing opinion, Hough, *C. J.*):

> "Undoubtedly the methods of shipment exhibited in this record are vile, and it may be admitted as within the legislative power to improve the social customs of a contract breaker."

POINT I.

Irrespective of whether or not Congress intended particularly to effect advances of wages, paid on foreign or domestic vessels in foreign ports, a contract or advance payment cannot be given legal effect in a court of the United States because to do so is contrary to the declared public policy of the United States.

As was urged in the Court below, contracts made in foreign jurisdiction which are contrary to the public policy of the forum cannot be enforced or recognized.

Wharton on Conflict of Laws, Vol. 2, 3d Ed., page 94: "A local law may prevent the enforcement of a contract within the jurisdiction and necessarily has that effect if it expressly applies to such contracts." (See *Lemonious* v. *Mayer,* 71 Misc., 522; *Williamson* v. *Majors,* 169 F., 764.) These cases deal with the statutes of Mississippi relating to gambling—or dealing in futures.

In 1912, the Supreme Court of Mississippi, in the case of *Ascher & Baxter* v. *Moyse,* affirmed the principle laid down in the case of *Lemonious* v. *Mayer* (see 57 So. West, 303). On page 304 it is said:

> "It is true that an act of the legislature can have no EXTRA-TERRITORIAL FORCE, and therefore can neither make unlawful a contract entered into upon the soil of another state, nor subject a party thereto to punishment, YET AT THE SAME TIME, in view of the well settled policy of this state, IN CONTEMPLATION OF THE GROWING AND INCREASING

> EVILS OF TRAFFIC, BOTH FINANCIAL AND MORAL, IT IS UNTHINKABLE TO BELIEVE THAT THE LEGISLATION INTENDED THAT THE COURTS OF THIS STATE should be thrown wide open, wherein the CONTRACTING PARTIES should be given redress for the enforcement of such contracts when made OUTSIDE THE STATE."

These laws provided that it should be unlawful to make such contracts in the State of Mississippi. Second, that any person making such contract should be guilty of a misdemeanor. Third, that in any event a contract for foreclosure and sale of a commodity "shall not be enforced by the Court; nor shall any contract of the kind commonly called 'futures,' be enforced, etc."

It was and still is urged that this statute and the decision above referred to of the Supreme Court of the State of Mississippi, and the U. S. Circuit Court of Appeals for the Fifth Circuit, bear a clear analogy to the statute and facts in the case at bar.

The Circuit Court of Appeals for the Second Circuit, speaking by the learned Judge Hough, has this only to say on the point (p. 7 of the Opinion):

> "We discover no consensus on this point of morals in the written law, there is no evidence on the subject and the rule appealed to ordinarily affects only *executory* contracts; the situation here is this: libelants demanded a part of their wages in accordance with the laws of the United States; respondent's answer: we paid you that part in Argentine in accordance with the law of that country; libelants reply: the law of the United States refuses to recognize that lawful and completed transaction. For so extreme a doctrine support can be found only in plain unquestioned legislative order, and such order can not be discovered in the Statute."

Here the Court meets the issue raised and decides it on the ground that the contract was *an executed one,* and the statute is not *plain.*

How can it be said that the contract *was wholly executed* when at the time it was made at Buenos Ayres, Argentina, it was necessary still for the seamen to go aboard the vessel and work for one month navigating the ship on the high seas? The contract the Court refers to we presume is the advance note itself: this is simply an order on the master signed by the seaman requesting the master to pay a sum of money to the crimp for value received, at the same time the seaman promised to go on the vessel and work for one month to pay for that note and his employment; wasn't the agreement of the seaman to work on the ship and earn the money paid to the boarding master at his order, a part of the contract? If so the contract was *executory.* Consideration for the note was one month's labor, to be performed on an American vessel.

Cyc. says: "An executed contract is one all of whose provisions have been *fully executed* and performed."

But even if the contract were executed—it is difficult to see how Congress could more clearly order the Courts to disregard such payments, the words *"in no case shall such payments be a defense"*—these words are all inclusive, plain, direct and simple, and yet the learned Court says there is no "Plain, unquestioned order."

Statutes of a foreign state which are contrary to the policy of the forum will not be enforced—even though no question of morals is involved. The Court of Appeals of the State of New York held that a statute of Kansas by right of comity amongst states cannot be enforced in the State of New York

against a stockholder to satisfy debts of a corporation, when the statutes of this State contain no such provision. *Marshall* v. *Sherman*, 148 N. Y., 14.

In *Smith* v. *The Union Bank*, 5 Pet., 523 (9 U. S., 452), the Supreme Court held that in the administration of an estate the law of the place of the administrator shall determine the priorities, not the laws of the State where the contract was made. By the laws of Virginia, a land debt had a priority. Under the laws of Maryland, where the estate was being administered, no such priority existed—held that the laws of Maryland controlled. Clearly in this case the contract was executed and not executory. The bond debt was executed, but lender not satisfied. Here, the advance note was executed, but the wages not paid.

In fact, it must be concluded that if a contract were made in a foreign land, even by the mandate of foreign government, still being contrary to the declared public policy of the United States, it could not be enforced or recognized by the Courts of the United States.

The law of England and America on the subject has been settled since 1789.

Biggs v. *Lawrence*, 178 Fed., 3 T. R., 454.
Clogos v. *Pebaleria*, 4 T. R., 466.

As to smugging contracts:

Lightfoot v. *Tenant*, 1796, 1 B. E. P., 522.

Contract valid in France, invalid in England.

As to contract for shipment of goods contrary to laws of England. Contract made in France, where lawful, is invalid in England.

Grell v. *Leng*, 1864, 16 C. B. (N. S.), 73.

It follows, of course, that if this principle of law is followed in the case at bar, the advances made by foreign owners in foreign ports will likewise be paid at the risk of paying them again in case their seamen happen to get them into a court of the United States—as held by Judge Ervin in *The Talus,* 242 F., 954, and Judge Chatfield in *Delogoa,* 244 F., 835, 2 *Imberhorne,* 240 F., 830.

If the contracts relating to the seamen were in any sense performed or finished at Buenos Ayres, there might be a different question raised here, *but a seaman is not paid his wages until he is discharged from the ship and his account settled. None of the libelants received their money or signed off from the ship's articles until they reached a port of the United States, as was contemplated by the contract of employment and statutes of the United States controlling.*

When a foreign vessel comes before a court of the United States, the situation may be the same.

> *Story on Conflict of Laws,* Art. 244, page 281:
>
> "But there is an exception to the rule as to the universal validity of contracts, which is, that no nation is bound to recognize or enforce any contracts which are injurious to its own interests or to those of its own subjects.
>
> *Greenwood* v. *Curtis,* 6 Mass., 376.
> *Blanchard* v. *Russell,* 13 Mass., 1.
> *Whister* v. *Stodder,* 8 Martin, 95.
>
> Huberus has expressed it in the following terms, *Quaetemus nihil potestati aut fori alterius imperantis ejusque civium praejudicitur,* and Mr. Justice Martin still more

clearly expresses it, in saying that the execution applies to cases in which the contract is immoral or unjust, or in which the enforcing it in a state, would be injurious to the rights, the interest, or the convenience of such state or its citizens."

Again, on page 324 this learned writer says:

"When a contract is made in a country between a citizen and a foreigner, it seems admitted that the law of the place where the contract is made ought to prevail, unless the contract is to be performed elsewhere. In the common law of England and America all these niceties are discarded, every contract, whether made between foreigners or between foreigners and citizens, is deemed to be governed by the laws of the place where it is made and is to be executed.

Smith v. *Meade*, 3 Conn., 253.
De Dobre v. *DeLantre*, 2 Harr. & Johns., 193.
Peck v. *Hibbard*, 26 Vt., 703.
Tasks v. *Nicholls*, 5 Barb., 38.

The rule was fully recognized by the Supreme Court of the United States. Contracts made in one place to be executed in another are to be governed by the laws of the place of performance. Andrews v. *Pond*, 13 Peters, 65." (Italics mine.)

And on page 326 of *Conflict of Laws*:

"In one of the earliest cases Lord Mansfield states the doctrine with his usual clearness: *'The law of the place can never be the rule where the transaction is entered into with an express view to the law of another country, as the rule by which it is to be governed,'* and this has uniformly been recognized as the correct exposition of the common law."

Story, Art. 23, page 21, *Conflict of Laws.*

On the contrary, every nation has an exclusive right to regulate persons and things within its own territory according to its own sovereign will and public policy.

Article 23:

> "A state may prohibit the operation of all foreign laws, and the rights growing out of them, within its own territories. It may prohibit some foreign laws, and it may admit the operation of others. It may recognize and modify and qualify some foreign laws; it may enlarge or give universal effect to others. It may interdict the administration of some foreign laws, it may favor the introduction of others; when its own code speaks positively on the subject it must be obeyed by all persons who are within the reach of its sovereignty—when its customary, unwritten, or common law speaks directly on the subject it is equally to be obeyed, for it has an equal obligation with its positive code. When both are silent, then, and then only, can the question properly arise, what law is to govern in the absence of any clear declaration of the sovereign will."

We find the following in the *Cyclopedia of Law and Procedure*, Vol. 9, p. 41:

> **"If an agreement binds the parties or either of them, or if a consideration is to do something opposed to the public policy of the state or nation, it is illegal and absolutely void however solemnly made. If a court enforce such agreements it would employ its functions in doing what it had created to destroy."**

Alabama:

State v. *Metcalfe*, 75 Ala., 42.

California:

Danielwitz v. *Sheppard,* 62 Cal., 339.

Dakota:

Peck v. *Levinger,* 6 Dak., 54, 50 N. W., 481.

Georgia:

Mercier v. *Mercier,* 50 Ga., 546, 15 Am. Rep., 594.

Illinois:

Cothran v. *Ellis,* 125 Ill., 496, 16 N. E., 646.

Indiana:

Blont v. *Proctor,* 5 Blackf., 265.

Iowa:

Merill v. *Packer,* 80 Iowa, 542, 45 N. W., 1076.

Louisiana:

Norton v. *Dawson,* 19 La. Ann., 464, 92 Am. Dec., 548.

Massachusetts:

Holcomb v. *Weaver,* 136 Mass., 265.

Michigan:

McNamara v. *Gargett,* 68 Mich., 454, 36 N. W., 218, 13 Am. St. Rep., 355.

Mississippi:

Adams v. *Rowan,* 8 Sm. & M., 624.

Nebraska:

Clarke v. *Omaha etc. R. Co.*, 5 Nebr., 314.

New York:

Richardson v. *Crandall*, 48 N. Y., 348 (affirming 47 Barb., 335, which reversed 30 How. Pr., 134).

Ohio:

Cumpston v. *Lambert*, 18 Ohio, 81, 51 Am. Dec., 442.

Tennessee:

Bledsoe v. *Jackson*, 4 Sneed, 429.

Texas:

Specht v. *Collins*, 81 Tex., 213, 16 S. W., 934.

Vermont:

Spalding v. *Preston*, 21 Vt., 9, 50 Am. Dec., 68.

Wisconsin:

Pickett v. *Wiotz School Dist. No. 1*, 25 Wis., 551, 3 Am. Rep., 105.

United States:

Milne v. *Huber*, 3 McLean, 212, 17 Fed. Cas No. 9,617.

POINT II.

A contract sued upon which is based upon illegal consideration cannot be enforced.

Duldy v. *Collier*, 87 Ala., 431; 13 Am. St. Rep., 55.

It would seem that the consideration for the advances at Argentina were clearly unlawful and void under *Section 10* of the *Seamen's Act*.

Alabama:

Duldy v. *Collier*, 87 Ala., 431; 6 So., 304; 13 Am. St. Rep., 55.

Arkansas:

Tucker v. *West*, 29 Ark., 386.

California:

Prost v. *More*, 40 Cal., 347.

Illinois:

Cincinnati Mut. Health Assn. Co. v. *Rosenthal*, 55 Ill., 85; 8 Am. Rep., 626.

Indiana:

Crowder v. *Reed*, 80 Ind., 1.

Iowa:

Dillon v. *Allen*, 46 Iowa, 299; 26 Am. Rep., 145.

Chambers v. *Games*, 2 Greene, 320.

Louisiana:

Harvey v. *Fitzgerald,* 6 Mart., 530.

Massachusetts:

Jones v. *Smith,* 3 Gray, 500.

Minnesota:

Solomon v. *Dreschler,* 4 Minn., 278.

Pennsylvania:

Thorne v. *Travelers' Ins. Co.,* 80 Pa. St., 15; 21 Am. Rep., 89.

South Carolina:

McConnell v. *Kitchens,* 20 S. C., 430; 47 Am. Rep., 845.

Even executed contracts are not recognized when contrary to the public policy of the state.

In *Brook* v. *Brook,* 7 Jur. N. S., 422; 3 Sne. & Gif., 481, it was held that marriage between uncle and niece though effected outside of England, will not be recognized in England, as it is contrary to the morals of that country.

In *Hyde* v. *Hyde,* Law Rep., 1 P. & P. 130, it was held, that a marriage consummated under the laws of the State of Utah, where polygamy is permitted, will not be enforced in England, though both parties were single at the time they entered into the contract. In that case the wife sought to compel support of the husband. Relief denied.

POINT III.

Congress by enacting Section Ten of the Seamen's Act intended to protect American seamen on American vessels on the high seas and in foreign ports, during the term of this employment.

The Court below finds that Congress did not intend this act to apply to any advances made outside the territory of the United States, the reasoning is this: that the statute contains a number of provisions making it a misdemeanor to pay such advances—obviously the statute can have no extraterritorial effect in punishing the master for a misdemeanor, therefore this clause: "The payments of such advance allotment, etc.," could be intended to apply only to advances made in the United States.

While we naturally think that the views of the dissenting justice are the more sound, still there are other very vital reasons for believing Congress intended to protect American seamen while in foreign ports; we find that we have laws for the regulation and control of masters and seamen in foreign ports and on the high seas, as to most every conceivable situation, such has always been the maritime policy of England and the United States. For instance:

By Section 4580 U. S. R. St.: If a seaman is discharged abroad it shall be done before the Consul, who shall see that the seaman gets his wages and that his rights are protected.

Section 4581 U. S. R. St.: Provides a penalty against the Consul for failure to perform his duty.

Section 4582 U. S. R. St.: Renders owners liable to penalty for a neglect of master to perform cer-

tain duties, where an American vessel is sold abroad.

Section 4511: *Provides manner in which seamen shall be engaged in domestic ports on American vessels.*

Section 4517 U. S. R. St.: *Provides, that seamen shipped abroad before Consul or agent on American vessels shall be engaged in the same manner as prescribed by Section 4511 for shipment of seamen in American ports before U. S. Shipping Commissioner.*

Surely, this is a clear indication of the intention of Congress to care for, guide, control and protect to the utmost American seamen in foreign ports.

The point is submitted, that where the interpretation of an act may be made in such a way as to protect American seamen that interpretation should be taken by the Court, especially as seamen have always been regarded as wards of the courts.

Reed v. *Canfield,* Vol. 20, Fed. Cas., 11641.
Harden v. *Gordon,* Fed. Cas., 6047.

That this has been the policy of England goes without saying. A mere glance at the Merchants Shipping Act with its many provisions as to conduct of seamen on board; on the high seas; in foreign ports; the duties of Consuls; the care of disabled and ill seamen and methods of returning such seamen to home ports; the manner in which they are to be discharged and paid off, etc., etc., is sufficient evidence of this fact.

Congress of the United States has followed in a measure the provisions made by the British Government for the protection of seamen, etc., and so we find:

The Supreme Court has held in the case of *The Belgenland*, 114 U. S., 325, that in all matters that affect parties on board a ship or members of the crew, shall be determined by the laws of the country to which the vessel belongs (p. 364):

> "In the absence of such treaty stipulations, however, the case of foreign seamen is undoubtedly a serious one when they sue for wages under a contract which is generally strict in its character; and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the shipowners, as well as those of the master and crew, as well when the ship is abroad as when she is at home * * *."

Judge Addison Brown in *The Brantford City*, 29 Fed., 373, held in the case of an English vessel, that the law of the forum would apply to determine the rights of the owner of the cargo and owner of the vessel, in case of loss, where it was urged by the owners of the ship that the law of England, which recognized a stipulation in the charter relieving owners of liability for negligent stowing of cargo, would be upheld, Judge Brown applied the law of the forum, to wit: the laws of the United States.

In England, the other day, a seaman, who had deserted his ship in the United States under circumstances that infracted no law of the United States, was sentenced to two years' imprisonment by the act committed outside the territorial jurisdiction—as growing out of the enforcement of Section 4530 R. S.

So, likewise, we find Section 4580, Sections 4582, 4548, 4577, are enactments to protect and care for American seamen in foreign ports. Congress having extended the protecting arm of the law, extra-

territorially in all of these instances, very probably did intend this Section 10a to act as a deterrent against crimping on American crews in foreign ports, the law being otherwise unable to assist them.

Section 8371, Revised Statutes 4580, as amended Act of June 26th, 1884, provides: upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of the seaman for his discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any act of Congress, or "ACCORDING TO THE GENERAL PRINCIPLES OR USAGES OF THE MARITIME LAW AS RECOGNIZED IN THE UNITED STATES, SUCH OFFICER SHALL DISCHARGE SAID SEAMAN, AND REQUIRE FROM THE MASTER OF SAID VESSEL, BEFORE SUCH A CHARGE SHALL BE MADE, THE PAYMENT OF THE SEAMAN'S WAGES WHICH MAY THEN BE DUE HIM."

Apropos of the above statute it occurs to us that under the decision of the learned Court here, a seamen on a vessel in Buenos Ayres, might be discharged in violation of Section 4580 R. S., in such manner as to create a cause of action by the laws of the United States. The act reads: "Under an act of Congress or according to the general principles or usages of the maritime law as recognized in the United States," the seaman upon bringing suit in a court of the United States, would be met with the answer that what was done, though a violation of American law, gave him no remedy, for the acts complained of were performed in a *foreign jurisdiction.*

According to the law as found by the learned Court, the master of an American vessel can engage a crew in a port of the United States for a voyage to South America and return. On arrival at a South American port, by unlawful means he can

drive the crew ashore, as deserters, without their wages; he can go to the crimp, get a crew who sign for a month's advance, and come back to the United States. If he makes the return trip in a month he discharges at New York his crew, and there is no money owed them—there is none paid them. The vessel has made a trip to South America and return and not a cent has been paid to the fifty or more deckhands and firemen who worked the ship. On the outward voyage the crew were forced to desert; on the return trip their wages were paid in a manner lawful in South America.

The Courts of the United States are powerless, because all of the acts were *extraterritorial*—and Congress has failed to give a plain mandate to the Courts.

Was the Seamen's Act intended to be so twisted and contorted as to permit such a scandalous thing? Can it be thought for a moment that an American shipowner or the people of the United States will be benefited, or desire any such system —nobody benefits except the crimp and the master —nobody desires it; of the two, the shipowner is best able to fight the evil.

As a matter of fact, there is no necessity of patronizing the crimp in Buenos Ayres. The laws of Argentina do not require it. It *was not* stipulated as stated by the learned Court that there was a *practical necessity.* The record shows clearly that *there was no necessity,* that many of these very libelants were *compelled* to go to the crimp by the *master* of the ship himself.

Lastly, as to the intention of Congress, if they intended to leave the American seaman in foreign ports open to this danger of being forced out of the ship because of the desire of the master to ship a

new crew, so that he might personally split the month's pay with the crimp, why did they insert this particular part of the Act, "the payment of such advance and allotment, etc., *shall in no case* be a defense to a suit or action"?

And does this protect the American seaman in foreign ports—obviously, it does—for if the American shipowner has to pay twice, he will instruct his master to obtain his crew in some other manner next time.

Shipowners in no country are compelled to give advances, they have been *permitted* to do so. They have always been regarded as an evil. They permit and encourage grafting, crimping and imposition against the seaman, their use tends to make the seaman more profligate and helpless, their abolition has long been petitioned by many societies engaged in social welfare work amongst seamen.

The case of *Trinity Church* v. *United States,* 143 U. S., 457, opinion by Judge Brewer, has been cited for the proposition:

> "that a guide to the meaning of a statute is found in the evil which it is designed to remedy, as gathered from contemporaneous events."

The situation as it existed was pressed upon the attention of the legislative body.

Certainly, in the case at bar there can be no question as to the intention of Congress in view of the facts before them; the history of this statute, the advance note evil itself, but that it intended to restrict, as far as possible, the use of advance notes on American vessels or other vessels coming into the United States.

As to the interpretation of statutes, the rule is, that the statutes ought to be so construed that no clause, sentence or word shall be superfluous, void or insignificant.

Montclair v. *Ramsdell*, 107 U. S., 147.

In construing a statute, every section, provision and clause should be expounded by reference to *every other*, and if possible *every clause* or *provision be given* and have the effect *contemplated* by the Legislature.

Peck v. *Jeness*, 7 Howard, 612.

In this connection, of course, we urge it as essential that the whole Seamen's Act of March 4, 1915, be taken into consideration. The provisions permitting seamen on foreign vessels to demand one-half wages in our ports, with a view to equalizing wages up; the provisions abrogating treaties between *foreign countries* and the United States, and the many other sections intended to benefit seamen as a class.

A primary rule of construction is that the Legislature must have been assumed to have meant precisely what in the words of the law it is commonly understood to import.

Endlich on Interpretation of Statutes, Art. 2.

Judge Veeder said in the court below:

> "In 1884 Judge Addison Brown held in *The State of Maine* (D. C.), 22 Fed., 734, that this section did not apply to advances made by an American vessel within a foreign

jurisdiction. On the other hand, Judge Ervin, sitting in the Southern District of Alabama, has recently held in *The Imberhorne* (D. C.), 240 Fed., 830, that the section applies to advances made in foreign ports (even by foreign vessels). It would serve no useful purpose to recapitulate the particular considerations urged in support of the opposing conclusions. The arguments in support of one construction of the statute, are not susceptible of a conclusive answer by the advocate of an opposing construction; a final conclusion can be based only upon a preponderance of the considerations which serve to disclose the intent of Congress. I shall hold that the statutory provision in question applies to the situation presented here, and that the advances in issue, although made in a foreign port, having been made by vessels of the United States, were unlawful and may be recovered by the seamen.

Decree for libelants in each case, with costs, for the amount of the advance payments deducted. Under the circumstances, the claim to the penalty specified in Rev. Stat. U. S., Sec. 4529 (Com. St., Sec. 8320) is denied."

In maritime cases, the law of the flag generally prevails as to contracts.

See:

Pope v. *Nickerson*, 3 Story, 465, Circuit Court of Appeals.

A vessel owned in *Massachusetts*, being on a voyage from a port in Spain to a port in Pennsylvania, was compelled by stress of weather to put in to Bermuda. The master sold the vessel and cargo; in an action by the shippers as against the owners,

it was held that the liability of the owners was governed by the laws of *Massachusetts.*

On page 335 of *Conflict of Laws* Judge Story gives this case:

A French ship borrowed money on bottomry bond at Fayal, a Portuguese port. The vessel proceeded on a voyage to England. The vessel and freight were insufficient to cover the bond. Held that the French law applies to the case as the law of the ship, though under English or Portuguese law the owner was *liable personally* for *deficiency;* under French law the owner was *not* personally liable.

Judge Ervin in *The Talus,* 242 Fed., 956, said:

> "Again, the whole act must be construed together, in order to determine the meaning of any portions thereof, which may be doubtful, if construed alone. In section 10 (a) I find the following provisions:
>
> 'The payment of such advance wages or allotment shall not in any case, except as hereafter provided, absolve the vessel, or the master, or the owner thereof, from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.'
>
> The reference here about the full payment of wages, 'after the same shall have been actually earned,' it seems to me, shows that the words used in Section 4530 necessarily have reference to the total wages earned at the time the demand is made, and not to such wages as may be earned by the seaman after the vessel arrives in a port of this country for the purpose of loading or discharging cargo. I therefore hold that the act gives to every seaman the right to demand from the vessel at each port where such vessel, during her voyage, loads or delivers

cargo, one-half of such wages as the seaman shall, at the time of such demand, have earned; that such seaman cannot demand any wages until at least five days' service has been rendered; that he cannot thereafter again demand the half part of such wages as may be subsequently earned until five days have elapsed from the last or prior payment of one-half of his wages.

I do not think that the vessel must be in port five days before the seaman can make his demand, provided there has been five days or more service by the sailor since he signed. I think the words, 'Provided such demand shall not be made before the expiration of, nor oftener than once in five days' mean shall not be made before the expiration of five days of service during which wages were earned, and not oftener than once in each five days thereafter (*The Jacob N. Haskell* [D. C.], 235 Fed., 914; *The London* [D. C.], 238 Fed., 645).

(2) The rights of a seaman in this country are controlled by this act and not by the flag of the vessel on which he is serving (*The Ixion* [D. C.], 237 Fed., 142).

(3) As I am ASKED TO REVIEW THE CONCLUSION I reached in the *Imberhorne* case, and after considering the matter, I still think the conclusion there reached was correct, and as this case may be taken up, and that one was not, I here refer to the portions of my opinion in the *Imberhorne* case, which set out my views as to the reasons advances made by a foreign ship in a foreign port to the sailors when there signed, cannot be allowed when the sailor here claims the half part of such wages as he may have earned when he reaches this port."

See *The Imberhorne*, 240 Fed., 832, as follows:

"(2) This brings us to the main question in the case. In the case of *The State of Maine* (D. C.), 22 Fed., 733, Judge Brown, in construing the Dingley Bill (Act June 26, 1884, C. 121, 23 Stat., 53), holds that, where advances were made to the seamen in a foreign jurisdiction in order to induce them to sign, such advance is not included under the prohibitory clause of the act, and hence such advance on wages should be deducted from the one-half of the wages earned by the seamen. His opinion is strongly and clearly written, and I AGREE IN THE MAIN WITH WHAT HE THERE SAYS IN HOLDING that the penalties declared by this act cannot be imposed upon the master or the vessel for acts done in a foreign jurisdiction. The Dingley Bill was amended by what is commonly called the 'Seamen's Act,' but the provisions of the Dingley Bill as to forbidding advances on seamen's wages do not seem to be changed by the amendment. The *question in my mind is one that does not seem to have been considered by Judge Brown*, and is whether the provisions of Section 10 of the Dingley Act, as amended by the Seamen's Act, does not lay down a rule which a judge in this country is bound to follow in passing upon how one-half of the wages of a seaman is to be calculated. In other words, that even though the penalties declared by the act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seaman's wages that have been earned, WE ARE DIRECTED BY THE TERMS OF THE ACT TO EXCLUDE ANY ADVANCES WHICH MAY HAVE BEEN MADE BY THE SHIP TO THE SEAMAN, WHETHER MADE IN A FOREIGN JURISDICTION OR NOT, AND WE MUST FOLLOW THIS RULE IN CALCULATING THE WAGES OF THE SEAMAN WHEN A LIBEL IS

FILED IN THE ADMIRALTY COURTS OF THIS COUNTRY.

The act, in amending Section 4530, says:

> 'Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the wages which he shall have then earned at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended and all stipulations in the contract to the contrary shall be void.'

Section 10(a) of the Dingley Act, as amended, provides:

> 'That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. * * * The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.'" (Capitals mine.)

POINT IV.

Judicial interpretation given to Act of 1884 has little effect.

The learned Trial Court seems to place considerable importance on this point made by appellant in the court below.

As a matter of fact, as pointed out in our brief on the argument, within two years after the decision of the State of Maine (*supra*) Congress amended the act so as to *permit advances in ports of the United States.* The act was that of January 19th, 1886 (see p. 8827, Vol. 7, U. S. Comp. Statutes). This act provided that a *seaman could make assignment of advances to original creditors* for board and clothing. This vicious act continued in force until 1915—when the present act was restored—so it appears that the judicial force of thirty years' standing is reduced to less than two years, and the State of Maine was never cited or followed in any single case until the present cases were decided by Judge Veeder, when it was *overruled*!

POINT V.

Irrespective of the arguments herein advanced, it would seem that the seamen should recover the wages due them here, to wit, one month's wages each, for the reason that the master or owners have not paid them the full amount of wages earned.

Section 12 of the Act of March 4th, 1915, following immediately after Section 10 of the Act, provides that seamen must be paid irrespective of any

receipt or release executed, which was contrary to the provisions of the laws of the United States:

> "No wages due or accrued to any seaman or apprentice shall be subject to attachment or arrestment from any court, and that payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of wages, or any attachment, encroachment or arrestment thereon; AND NO ASSIGNMENT OR SALE OF WAGES OR OF SALVAGE ACCRUING THEREON SHALL BIND THE PARTY MAKING THE SAME, EXCEPT SUCH ALLOTMENTS AS ARE AUTHORIZED BY THIS TITLE. THIS SECTION SHALL APPLY TO FISHERMEN EMPLOYED ON FISHING VESSELS AS WELL AS TO SEAMEN, etc."

It is respectfully urged that there *was no consideration for the execution of the receipt in Buenos Ayres by each of the libelants; that they have actually earned the wages specified in the libel on board an American ship;* that they have not been paid these wages. No valid evidence of payment has been presented to the Trial Court herein, and for this additional reason the decision of the Trial Court should be affirmed.

It is respectfully submitted that the questions involved in this case are of sufficient general material and national importance as to make it desirable that they be passed upon by this Honorable Court, and petitioner therefore prays that the writ of certiorari herein asked for be granted.

SILAS B. AXTELL,
Counsel for Petitioner.

STATE OF NEW YORK, }
CITY AND COUNTY OF NEW YORK, } ss.:

SILAS B. AXTELL, being duly sworn, deposes and says that he is the Counsel for the Petitioners in the within action; that he has read the foregoing petition, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

That the reason this verification is made by deponent instead of the petitioners is for the reason that the petitioners are seamen and are not within the jurisdiction of the State of New York or the jurisdiction of this honorable court, as deponent is informed and believes.

SILAS B. AXTELL.

Sworn to before me this
9th day of March, 1918.

ARTHUR LAVENBURG,
Notary Public,
Bronx County.
Certificate filed in New York County, No. 280.

17.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No.

JOHN HARDY *et al.*,
Libellants-Appellees

AGAINST

Barkentine WINDRUSH,
SHEPARD & MORSE LUMBER COMPANY,
Claimant-Appellant

No. [redacted]

PAUL NIELSEN *et al.*,
Libellants-Appellees

AGAINST

Sailing Ship RHINE,
RHINE SHIPPING COMPANY,
Claimant-Appellant

No. [redacted]

MEMORANDUM FOR CLAIMANTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

These cases involve no new proposition. They are governed by *The State of Maine*, 22 Fed. Rep. 734, decided in 1884 by Judge Addison Brown in the District Court for the Southern District of New York. That decision has been consistently followed in practice and the rule it lays down has been expressly incorpo-

rated in section 237 of the United States Consular Regulations, as follows:

"237. Advances to Seamen Shipped in Foreign Ports.—The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of the Act referred to in the next preceding paragraph. The final clause of the Act, which declares that this section shall apply as well to foreign vessels as to those of the United States, and that in case of violation a clearance shall be refused them, is a clear indication that Congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in the United States alone. The provision of the statute as to payment of advance wages is not intended to apply to seamen shipped in foreign ports. In the settlement of wages due seamen in such cases, therefore, consular officers will take into account what has been paid in advance. 22 Fed. Rep. 734."

The State of Maine was cited to this Court in the briefs filed in *Patterson* v. *Bark Eudora*, 190 U. S. 169, and accords with this Court's decision in that case, where Mr. Justice Brewer, applying the statute to a British vessel in an American port, referred with approval (pp. 178–179) to the brief filed by the Government emphasizing the difficulty of American vessels securing crews, and consequent detriment to our commerce, unless the statute should be applied to foreign vessels in our ports. The converse situation applies with equal force to American vessels in foreign ports.

Since the Seamen's Act of March 4, 1915, did not change in any material respect the section concerning advances, the case now stands as if Congress had expressly declared the intention and interpretation of the statute to be as was stated in *The State of Maine, supra.*

It is respectfully submitted that the petition should be denied.

ROSCOE H. HUPPER
Counsel for Claimants-Appellants

March 22, 1918

Supreme Court of the United States

OCTOBER TERM, 1918.

Nos. 393 & 394

PAUL NEILSON *et al.*,

Petitioners,

vs.

Sailing Ship *Rhine*, RHINE SHIPPING COMPANY,

Respondent.

JOHN HARDY *et al.*,

Petitioners,

vs.

Berkentine *Woodrock*, SHEPARD & MORSE LUMBER COMPANY,

Respondent.

BRIEF FOR PETITIONERS.

SILAS B. AXTELL,

Proctor for Petitioners.

INDEX.

CASES CITED.

Supreme Court of the United States

PAUL NEILSON *et al.*,
Petitioners,

against

Sailing Ship *Rhine*, RHINE SHIPPING COMPANY,
Respondent.

JOHN HARDY *et al.*,
Petitioners,

against

Barkentine *Windrush*, SHEPARD & MORSE LUMBER COMPANY,
Respondent.

The above cases come to this Court upon a writ of certiorari from the United States Circuit Court of Appeals for the Second Circuit; petition for certiorari having been filed on March 26, 1918, and the writ of certiorari and return filed April 15, 1918.

Facts.

These cases are alike in facts and therefore involve the same proposition of law. In the case of *Hardy et al.* against *Windrush*, there are joined nine seamen who seek to recover the sum of $25 each or one month's wages alleged to have been

wrongfully deducted from their account of wages by the master, upon the completion of the voyage at New York on July 13, 1916, except that one of the libelant-petitioners, Johana Goldstein, sues for the recovery of $40 or one month's wages earned as cook of the ship.

In the action of *Neilson et al.* against *Rhine*, there are joined the claims of ten seamen, each of whom is seeking to recover wages in the sum of $25, alleged to have been wrongfully deducted from their account of wages, at the completion of the voyage at New York on December 28, 1916.

Petitioners John Hardy *et al.* signed articles on the American bark *Windrush*, at the port of Buenos Ayres, on or about May 10, 1916, for a voyage to New York, there to be discharged and paid off. They signed regular articles of agreement as required by the laws of the United States, before the American Consul at Buenos Ayres. They went aboard said vessel directly and proceeded from Buenos Ayres within two days thereafter. Some of the petitioners were engaged by the master or first officer of the American bark *Windrush* on board the ship at Buenos Ayres before they went to the boarding house of Tommy Moore, and were directed by said master or first officer to go immediately to the boarding house of Tommy Moore (Record, p. 21, fol. 30).

Petitioners Paul Neilson *et al.* signed articles on the American bark *Rhine* before the American Consul at Buenos Ayres on October 7, 1916, for a voyage to New York. That said bark proceeded from the port of Buenos Ayres within two days after said articles were signed and arrived at the Port of New York on December 28, 1916.

Libels were filed in both cases shortly after the arrival of the vessels in New York, for the recovery of one month's wages which were unlawfully

deducted by the owners of the respective vessels to satisfy the notes made by the seamen at Buenos Ayres in payment of money advanced by the master of each vessel to the boarding house keeper, Tommy Moore, at Buenos Ayres.

The District Court rendered a decree for the libelants in each case, which decree was reversed by the Circuit Court of Appeals, and is now before this Court for disposition.

The Act involved is Section 11, Chap. 153 of the Act of March 4, 1915, being 38 Stat. at Large, 1168 to 1169, which was in turn an amendment of Section 10, Chap. 121 of the Act of June 26, 1884, being 23 Stat. at Large, 55-56. The section involved is as follows:

> "Sec. 10a. That it shall be and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, or to make any order, or note or other evidence of indebtedness therefor, to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages.
>
> Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars and may also be imprisoned for a period of not exceeding six months at the discretion of the court. The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages."

The Statute.

The important differences in the Acts of 1884 and 1915 are indicated in italics:

ACT OF JUNE 26, 1884, c. 121, SEC. 10, 23 Stat. L. 55, 56.	ACT OF MARCH 4, 1915, c. 153, SEC. 11, 38 Stat. L. 1168-69.
"SEC. 11. That section twenty-four of the act entitled 'An act to amend the laws relating to American seaman, for the protection of such seaman, and to promote commerce,' approved December twenty-first, eighteen hundred ninety-eight, be, and is hereby, amended to read as follows:	
"SEC. 24. That section ten of chapter one hundred twenty-one of the laws of eighteen hundred eighty-four, as amended by section three of chapter four hundred twenty-one of the laws of eighteen hundred eighty-six, be, and is hereby, amended to read as follows:	
"SEC. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages *before leaving the port at which such seaman may be engaged* in advance of the time when he has actually earned the same, or to pay such advance	"SEC. 10 (*a*). That it shall be, and is hereby, made unlawful in any case to pay any seaman wages
wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen.	in advance of the time when he has actually earned the same, or to pay such advance wages, *or to make any order, or note, or other evidence of indebtedness therefor* to any other person, or to pay any person, for the shipment of seamen *when payment is deducted or to be deducted from a seaman's wages.*

Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than
four times the amount of the wages so advanced or remuneration so paid
and may be also imprisoned for a period not exceeding six months, at the discretion of the court. **The payment of such advance wages or remuneration shall in no case, except as herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages:** Provided, That this section shall not apply to whaling vessels: And provided further,

Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than
$25 nor more than $100
and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. **The payment of such advance wages or allotment shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit or action for the recovery of such wages.**

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remunera-

tion whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation.

(*b*) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister or children.

(*c*) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement

and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

(*d*) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine of not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

This section shall apply as well to foreign vessels as to vessels of the United States;

(*e*) *This section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner or agent of a vessel of the United States would be for similar violation.*

and any foreign vessel the master, owner, consignee or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States."

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(*f*) Under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

The question and proposition of law involved in these cases is, briefly: Does Section 10a, making unlawful payments of wages to seamen in advance of the time they are earned, apply to advances made in foreign ports on American vessels?

The brief that follows argues that the Act does apply on the grounds:

1st: That advances are against the public policy of the United States and will not be recognized by its courts.

2nd: The contract was one looking to a performance partly on American soil, within the territorial jurisdiction of the United States; that the law of the place of performance governs the said contract.

3rd: That Congress intended the Act to apply to all advances made in foreign ports where the satisfaction of the advance note might be made in the United States.

POINT I.

Irrespective of the intention of Congress to effect advances of wages paid on domestic ships in foreign ports, a contract cannot be given legal effect in a court of the United States which is contrary to the declared public policy of the United States.

This doctrine has been laid down in the Supreme Court of the United States in the case of *The Bank of Augusta* v. *Earle,* 13 Pet., 519, where the Court was asked to enforce in the United States District Court for the District of Alabama a contract valid by the laws of Georgia, where it was made, and alleged to be invalid in the State of Alabama.

Suit was on a bill of exchange purchased in Alabama by an agent of a Georgia bank. Alabama did not give power to any but banks to purchase bills of exchange, but it did not declare unlawful the purchase of notes by other than banks.

While the Court here enforced the contract on the ground that the statutes of Alabama were not plain in their condemnation of such contracts, the Court assumed that the rule relating to recognition by comity by the laws of a foreign state was such that a state might refuse to recognize and enforce a contract valid by law of the state where made, but inconsistent with or contrary to the public policy of the state of the forum.

This rule is clearly stated in the District Court case of *Swann* v. *Swann*, E. D. of Arkansas, 21 Fed., 299, where Judge Caldwell holds that contracts against the settled public policy of the state will not be enforced, although they may be valid by the law of the place where they are made. The Court cited as its authority *Vidal* v. *Girard's Ex'ers*, 2 How., 127, page 198.

The suit in the *Swann* case involved a note which was executed on a Sunday in Tennessee, where such notes were valid. Enforcement of the note was sought in Arkansas. The Court held the note enforceable because the statutes or laws of Arkansas did not make invalid a note executed on Sunday.

This law is practically universally applied in every jurisdiction throughout the Union. Its justification has been stated by Justice Fry in the English case of *Rousillon* v. *Rousillon*, 14 Ch. D., 351, page 369:

> "It appears to me, however, plain on general principles, that this court will not enforce a contract against the public policy of this country wherever it may be made. It seems to me almost absurd to suppose that the courts of this country should enforce a contract which they consider to be against its public policy simply because it happens to have been made somewhere else."

The rule has many applications. It has been applied to:

1. Contracts of marriage between persons within the prohibited degrees.

U. S. v. *Rodgers*, 109 Fed., 886.
Sutton v. *Warren*, 10 Metc., 451.
Medway v. *Needham*, 16 Mass., 157.

2. Marriages between whites and blacks.

Dupre v. *Boulard*, 10 La. Ann., 411.
State v. *Kennedy*, 76 Mo., 251.

3. Separation agreements.

Palmer v. *Palmer*, 26 Utah, 31.
Hope v. *Hope*, 8 De G. M. G., 731.

4. Contracts of married women.

Hanover National Bank v. *Howell*, 118 N. C., 271.
Hayden v. *Stone*, 13 R. I., 106.

5. Agreements involving champerty.

The Clara A. McIntyre, 94 Fed., 552.
Holidays Case, 27 Fed., 830.

6. Contracts in restraint of trade.

Union Locomotive etc. Co. v. *Erie R. Co.*, 37 N. J. L., 23 (where a contract between a railroad company in New Jersey and certain individuals giving the latter the exclusive right of transporting certain kinds of freight over the railroad had been made in New York, and had been

sustained by the Courts of that State, but in an action for the breach of some of its provisions in New Jersey it was held that the contract was void because against the public policy of New Jersey and would not be enforced, although valid where made).

Bath Gas Light Co. v. *Rowland,* 84 A. D., 563; aff. 178 N. Y., 631, mem.

Rousillon v. *Same,* 14 Ch. D., 351 (where parties had entered into an agreement in France in restraint of trade, and although the agreement was perfectly valid in France, where the common-law doctrine regarding such contracts as against public policy is unknown, it was held that the agreement would not be enforced by an English court).

7. Contracts giving preferences to creditors.

Stricker v. *Tinkham,* 35 Ga., 176.
Thurston v. *Rosenfield,* 42 No., 474.
Moore v. *Bonnell,* 31 N. J. L., 90.
Varnum v. *Camp,* 13 N. J. L., 32.
Dearing v. *McKinnon Dash etc.,* 165 N. Y., 78, at page 87.

8. Agreements to influence public officials.

Oscanyan v. *Winchester Repeating Arms Co.,* 103 U. S., 261 (where plaintiff, an officer of the Turkish Government, had made a contract with defendant, a manufacturer of firearms, under which he was to receive a commission on such as he

could induce that government to purchase, and in a suit on the contract it was held by the Supreme Court of the United States that even were the contract made in Turkey and valid there, the Turkish Government being willing that its officers should receive bribes for official action, yet contracts of this kind, being against the public policy of this country, would not be enforced in our courts).

9. Gambling contracts.

One of the leading cases under this heading and one involving a statutory provision which resembles the one at bar, is that of *Lemonius* v. *Mayer,* 71 Mass., 514, where a statute of Mississippi declared the making of gambling contracts unlawful, and further provided:

> "The courts of Mississippi shall not be open for the enforcement of any rights under such contracts."

This is strikingly similar to that portion of Section 10-E of the Seaman's Act, which reads:

> "The payment of such advance wages or allotment shall in no case * * * absolve the vessel or the master or owner thereof, from the full payment of wages after the same shall have been actually earned, and *shall be no defense to a libel, suit or action for the recovery of such wages."*

The United States Courts follow the same law.

> *Kansas Savings Bank* v. *National Bank of Commerce,* 38 Fed., 800.

Here the suit was one for the payment of a certificate of deposit which was negotiated for a gambling debt. The Court, after holding that the consideration for the certificate was unlawful, went further and ruled that, far from leaving the parties to a gambling contract where it found them, it would restore to the loser the certificate of deposit given by him in payment of his loss.

The seamen here are in precisely the same position. They executed a note to the master, payable from their wages upon arrival in a port of the United States. The question is *not* as stated by the Circuit Court in its opinion:

> "Libelants demand part of their wages in accordance with the law of the United States; Respondents' answer—we paid you that part in Argentine in accordance with the law of that country; libelants' reply the law of the United States refuses to recognize that lawful and completed transaction."

But is rather this:

Libelants demand the whole of the wages they have earned—respondents' reply, we used part of your lawfully earned wages to satisfy a note of yours which you executed in a foreign country.

Libelants' reply—the note cannot be recognized as valid in courts of the United States, where the contract was to be performed, *i. e.*, where the payment of the note was contemplated.

The seamen are not in a position where they must go to the Court and beg the Court to alter the *status quo*. The respondents had in their possession money belonging to the seamen—that is, wages earned, and they took advantage of this possession to satisfy, out of said wages, after arrival in a

United States port, the notes which the seamen executed in Buenos Ayres.

In a suit for wages lawfully earned, respondents now ask this Court to recognize and sanction the advantage they took of the seamen. The Court, as did the District Court in the *Kansas* case just cited, should restore to the libelants their advance notes, payment of which was contemplated in the United States and consideration for which is not recognized as legal in the United States and compel the respondents to pay the lawfully earned wages, the recovery of which is the object of these suits.

The Court, in the *Kansas* case, aptly said:

> "The law of public preservation, like the natural law of self-preservation, forbids that any nation or state should be bound to recognize and enforce any contract no matter where made, inimical or injurious to its own interests or hurtful or pernicious to its moral sense and public policy."

Also in the case of *Williamson* v. *Majors,* 169 Fed., 754, the Circuit Court of Appeals for the 5th Circuit refused to enforce a gambling contract.

10: Agreements compounding crime.

> *Wight* v. *Rindskopf,* 43 Wis., 344, page 364 (where a person brought a suit in Wisconsin for legal services rendered defendant, and the proof was that the object of the service was the compounding of a crime, defendant and others being at the time under indictment in the Federal Courts for violation of the United States revenue laws, it was held that the agreement under which the service was

rendered was void for illegality, such contracts being contrary to public policy of the State. On rehearing, *it was brought to the attention of the Court that the Federal statutes expressly authorize such compromises with the Government,* with the consent of the Secretary of the Treasury and the Attorney-General. The Supreme Court admitted that the statute might be binding on the Federal Judges in actions for their courts, but refused to give it any recognition in the State Court, saying:

> "We could not more enforce contracts compounding or tending to compound crime coming from the federal jurisdiction, than contracts of polygamy from the jurisdiction of Utah or of Turkey").

The rule is not affected by the fact that the objectionable parts of the contracts have been executed and that those remaining are innocuous.

Hope v. *Hope,* 8 De G. M. & G., 731, 44 Reprint 572 (where a husband and wife, living in France, made a contract in that country, which provided for two things, which by the law of England were illegal, namely, the collusive conduct of a divorce suit, and the abandonment by the husband of the custody of his children, and the English Courts refused to enforce any part of it, holding that, if a court of one country is called on to enforce a contract entered into in an-

other, it is not enough that the contract should be valid according to the laws of the latter, for if any part of the contract is *inconsistent with the law and the policy of the former, the contract will not be enforced, even as to another part of it which may not be open to this objection and may be the only part remaining to be performed*).

This last corrolary covers precisely the objection made by the Circuit Court that the contracts of the seamen are executed or partly so. The fact remains that the contracts were not wholly executed, for the work was to be performed on the high seas on an American ship, and after the notes were given and the seamen's wages were not payable until arrival in a port of the United States.

The law is nowheres better stated that in the case of the *Kensington,* 183 U. S., 263. A contract had been executed in Belgium between a passenger and shipowner exempting the latter from liability for any negligence on the part of the shipowner, his agents, etc., and it was stipulated that "all questions arising hereunder are to be settled according to the Belgian Law with reference to which this contract is made." A libel was subsequently filed against the ship in the District Court for the Southern District of New York to recover the value of the passenger's baggage, which it was alleged the ship had wrongfully failed to deliver.

It was contended that the contract having been entered into in Belgium and valid under the Belgian Law, there could be no recovery in courts of the United States, where such conditions and stipu-

lations in a carrier's contract are in conflict with public policy. The Court, on page 269, says:

> "The contention amounts to this: Where a contract is made in a foreign country, to be executed at least in part in the United States, the law of the foreign country, either by its own force or in virtue of the agreement of the contracting parties, must be enforced by the courts of the United States, even though to do so requires the violation of the public policy of the United States. To state the proposition is, we think, to answer it. It is true, as a general rule, that the *lex loci* governs, and it is also true that the intention of the parties to a contract will be sought out and enforced. But both these elementary principles are subordinate to and qualified by the doctrine that neither by comity nor by the will of contracting parties can the public policy of a country be set at naught. *Story, Conflict of Laws,* secs. 38, 244. Whilst, as said in *Knott* v. *Botany Mills,* the previous decisions of this court have not called for the application of the rule of public policy to the precise question here arising, nevertheless, that it must be here enforced is substantially determined by the previous adjudications of this court. In *Liverpool & Great Western Steam Co.* v. *Phoenix Insurance Co.,* 129 U. S., 397, the question arose, whether conditions, exempting a carrier from responsibility for loss caused by the neglect of himself, or his servants, could be enforced in the courts of the United States, the bill of lading having been issued in New York by a British ship for goods consigned to England. Despite the fact that conditions, exempting from responsibility for loss, arising from negligence, were valid, by the laws of New York, and would have been upheld in the courts of that State, it was decided that, in view of the rule of public policy applied by

the courts of the United States, effect would not be given to the conditions. In the very nature of things, the premises, upon which this decision must rest, is controlling here, unless it be said that a contract, made in a foreign country, to be executed in part in the United States, is more potential to overthrow the public policy, enforced in the courts of the United States, than would be a similar contract, validly made, in one of the States of the Union. Nor is the suggestion that, because there is no statute expressly prohibiting such contracts, and because it is assumed no offence against morality is committed in making them, therefore they should be enforced, despite the settled rule of public policy to the contrary. The existence of the rule of public policy, not the ultimate causes upon which it may depend, is the criterion. The precise question has been carefully considered and decided in the District Courts of the United States. In *The Guild Hall,* 58 Fed. Rep., 796, it was held that a stipulation in a bill of lading issued at Rotterdam on goods destined to New York, exempting the carrier from liability for negligence, would not be enforced in the courts of the United States, although such a condition was valid under the law of Holland. In *The Glenmavis,* 69 Fed. Rep., 472, the same rule was applied to a bill of lading issued in Germany by a British ship for goods consigned to Philadelphia, etc."

What determines the public policy of a state?

While the term "settled public policy," as used in the discussion of questions concerning the conflict of laws, is subject at times to some uncertainty of judicial definition, the Supreme Court of the United States has laid down a simple test, easy of application.

In the case of *Vidal* v. *Girard's Ex'ers*, 2 How., 127, the Court, in replying to an agreement of Mr. Webster, said:

> "Nor are we at liberty to look at the general conditions of the supposed public interests and policies of Pennsylvania, upon this subject, *beyond what its constitution and laws make known to us.*"

The District Court in the case of *Swann* v. *Swann, supra,* at page 301 said:

> "The only authentic and admissible evidence of the public policy of a state on any given subject are its constitution, laws and judicial decisions. The public policy of a state, of which courts take notice, and to which they give effect, must be deduced from these sources."
>
> "The public policy of a state or nation is to be found in its constitution and its statutes."
>
> *Ziegler* v. *Illinois Bank,* 245 Ill., 180.

It is also obvious that no state will give effect to the laws of another on the principles of comity when the effect would be *injurious to the State or its citizens.*

Wodward v. *Roane,* 23 Ark., 523.

This principle has varied applications and is universally sustained by the authorities of practically every state.

The leading New York case on this is *Marshal* v. *Sherman,* 148 N. Y., 9, and the English case of *Hill* v. *Spear,* 50 N. H., 253, where the Court, at page 262, says:

> "While the comity of nations and states will always regard with respect and consideration the laws and customs of other communities, still its own interests and welfare of its own citizens will nevertheless be held by every state in paramount consideration."

Marshal v. *Sherman, supra,* holds that it applies exclusively to each sovereignty to determine for itself whether it can enforce a foreign law, without at the same time neglecting the duty that it owes to its own citizens and subjects. The New York Court of Appeals here refused to enforce by right of comity, a Kansas statute against a stockholder to satisfy corporate debts when the statutes of New York contained no similar provision.

Is the practice of crimping against the public policy of the United States?

Crimping is a vile and pernicious practice, destructive of a free and clean class of seamen. It involves a greater moral turpitude than gambling, for the gambler is one from choice, while the seaman is a helpless victim of circumstances.

Can it be said that the United States has no policy in regard to this insidious evil, when Congress has not only ruled that it shall not deprive a seaman of his justly earned wages, but has in addition declared it to be a crime and punishable as such?

The Supreme Court itself has had occasion to characterize this practice. In *Patterson* v. *Bark Eudora,* 190 U. S., 169, where this Court held advances made to seamen on foreign vessels in ports of the United States were illegal, the Court says on page 175:

> "If the necessities of the public justify the enforcement of a sailor's contract by excep-

tional means, justice requires that the rights of the sailor be in like manner protected. The story of the wrongs done to sailors in the larger ports, *not merely of this nation but of the world,* is an oft-told tale, and many have been the efforts to protect them against such wrongs. One of the most common means of doing these wrongs is the advancement of wages. Bad men lure them into haunts of vice, advance a little money to continue their dissipation, and, having thus acquired a partial control and by liquor dulled their faculties, place them on board the vessel just ready to sail and most ready to return the advances. When once on shipboard and the ship at sea the sailor is powerless and no relief is availing. It was in order to stop this evil, to protect the sailor, and not to restrict him of his liberty, that this statute was passed. And while in some cases it may operate harshly, no one can doubt that the best interests of seamen as a class are preserved by such legislation."

POINT II.

The contract was one looking to a performance partly on board an American vessel while on the high seas and partly within the territorial jurisdiction of the United States; that the law of the place of performance governs the said contract.

More briefly the rule may be stated as follows: The law of the place of the performance of the contract governs its interpretation.

Where the contract is made in one country and is to be performed either wholly or partly in another, the proper law of the contract may be pre-

sumed to be the law of the country where performance is to take place—that is the *lex loci solutionis* or as per Lord Esher in the English case of *Chatenay* v. *Brazilian Sub. Tel. Co.*, 1881, 1 Q. B., 79, at 82:

> "The business sense of all business men has come to this conclusion, that if a contract is made in one country to be carried out between the parties in another country, either in whole or in part, unless there appears something to the contrary, it is to be concluded that the parties must have intended that it should be carried out according to the law of that other country."

The case of *Hall* v. *Cordell*, 142 U. S., 116 (1891), illustrates this principle. In that case it was held that the obligation to perform a verbal agreement made in Missouri to accept and pay on presentation at the place of business of the promisor in Illinois, all drafts drawn upon him by the promisee for live stock to be consigned by the promisee from Missouri or promisor in Illinois, is to be determined by the law of Illinois, the place of performance and not by the law of Missouri where it was made.

Also in *N. Y. & Va. State Stock Bank* v. *Gibson*, 5 Duer, 574, at 583 the Court said:

> "The general rule of law would lead us to the conclusion that the validity of a promise to accept a bill of exchange depends upon the law of the place where the bill is to be accepted and paid."

Also:

Pritchard v. *Norton*, 106 U. S., 124,

where New York was the state in which an indemnity bond was executed and Louisiana, the state in which the parties contemplated enforcement of its obligations, the Louisiana law was held to apply.

This same principle of law has been applied in practically every jurisdicition of the United States. Citations are superfluous and only a few are given:

Union Nat. Bank v. *Chapman,* 169 N. Y., 538.

Old Dominion etc. Co. v. *Bigelow,* 203 Mass., 159.

Chicago State Bank v. *King,* 244 Pa., 29.

The reason for this rule is that the consideration, *i. e.,* performance, depends for its validity upon the law of the place of performance.

Hubbard v. *Sayre,* 105 Ala., 540.

The application of this principle to the case at bar is simple. The contract here in question was the note signed by the seamen in Buenos Ayres, for a consideration not recognized by the laws of the United States and payable at a port of the United States.

There is no doubt that both parties—that is, the master and the seamen—contemplated the performance of their contract—that is, the payment by the seamen of the note in an American port. The American law, therefore, governs. Consideration for the note being illegal by the laws of the United States, the Court cannot sanction its satisfaction out of lawfully earned wages of the seamen.

Under the principle in the case of *Kansas Savings Bank* v. *National Bank of Commerce, supra,* the Court should here restore the advance notes to the

libelants and decree the full recovery of their wages lawfully earned.

POINT III.

That Congress intended the Act to apply to all advances made in foreign ports where the satisfaction of the advance note might be made in the United States.

As indirectly stated by Judge Hough in the majority opinion in the Circuit Court of Appeals, the design of the statute to give relief is more dominant than the design to inflict punishment. The penal provisions of a statute do not necessarily make it penal in its whole intent or for all purposes.

Hyde v. *Cogan,* 2 Doug., 699.
Short v. *Hubbard,* 2 Bing., 349.

Also a statute which is made for the good of the public, though it is penal, ought to receive an equitable and liberal contention.

Tyner v. *U. S.,* 23 App. Cases, D. C., 324.

In affording relief in a civil suit under a statute, both remedial and penal, the Court will not be bound by any narrow technical or forced interpretation by which it might have been bound were the statute alone penal.

Northern Securities Co. v. *U. S.,* 193 U. S., 197.

The Supreme Court of the United States has illustrated the application of this principle in the case

of *United States* v. *Twenty-five Packages of Panama Hats*, 231 U. S., 358, which was a proceeding to forfeit certain merchandise under an act of Congress of August 5th, 1909 (36 Stat. 11, 97), because of an attempt to introduce imported merchandise into the commerce of the United States by means of fraudulent invoices made by a consignor in a foreign country. It was argued that the goods could only be forfeited for the same acts that would support an indictment, and, inasmuch as the consignor could not be prosecuted in this country for making a false invoice in a foreign country, neither could the goods be forfeited for the same conduct in the same place, and, in answer to that argument, the Court, on page 362, says:

> "But while punishment for the crime and forfeiture of the goods will often be coincident penalties, *they are not necessarily so,* nor is there any inconsistency in proceeding against the *res* if the wrongdoer is beyond the jurisdiction of the court. The very fact that the criminal provision of the statute does not operate extra-territorially against the consignor, would be a reason why the goods themselves should be subjected to forfeiture on arrival here." (And cases cited.)

The Court, under these authorities, is free to place a liberal interpretation on this section. The suit is here a civil one and giving extra-territorial effect to this section in the present civil case does not imply that respondents would be found guilty in a criminal proceeding under a strict interpretation of the same clause.

A liberal interpretation would take into consideration the evil which it was the design of Congress to remedy as gathered from the events leading up to its passage.

Trinity Church v. *Brewer,* 143 U. S., 457.
See *American Sea Power and the Seaman's Act* by Andrew Furuseth. Also *American Seamen* by Hon. John E. Raker (appended herewith).

The Courts may, in construing a statute, recur to the history of the times when it was passed, and this is frequently necessary in order to ascertain the reason as well as the meaning of particular provisions in it.

U. S. v. *Union Pacific,* 91 U. S., 72.

Citing:

Aldridge v. *Williams,* 3 How., 24.
Preston v. *Broder,* 1 Wheat., 120.

A statute should also be read with reference to its leading idea, and its predominant purpose will prevail over the literal import of particular terms or clauses, operating as a reason for expanding the significance of doubtful clauses, so that all interpretations may accord with the spirit of the entire Act.

State ex rel. Minn., St. Paul & S. S. M. R. Co. v. *R. R. Com.,* 137 Wis., 80.
People v. *Long Island R. R.,* 139 N. Y., 130.

See also:

Inka v. *Schlosser,* 97 Ill. App., 222.
Groff v. *Miller,* 20 App. D. C., 23.

Even a cursory review of the various sections of this Act reveals in Congress a zealous regard for the uplift, protection and emancipation of American seamen. The legislation against crimping is but one of the many reforms. For instance:

By Section 4580 U. S. R. St.: If a seaman is discharged abroad it shall be done before the Consul, who shall see that the seaman gets his wages and that his rights are protected.

Section 4581 U. S. R. St.: Provides a penalty against the Consul for failure to perform his duty.

Section 4582 U. S. R. St.: Renders owners liable to penalty for a neglect of master to perform certain duties, where an American vessel is sold abroad.

Section 4511: *Provides manner in which seamen shall be engaged in domestic ports on American vessels.*

Section 4517 U. S. R. St.: Provides that seamen shipped abroad before Consul or agent on American vessels shall be engaged in the same manner as prescribed by Section 4511 for shipment of seamen in American ports before U. S. Shipping Commissioner.

So, likewise, we find Section 4580, Sections 4582, 4548, 4577, are enactments to protect and care for American seamen in foreign ports. Congress having extended the protecting arm of the law, extraterritorially in all of these instances, very probably did intend this Section 10a to act as a deterrent against crimping on American crews in foreign ports, the law being otherwise unable to assist them.

Section 8371, Revised Statutes 4580, as amended Act of June 26th, 1884, provides: Upon the application of the master of any vessel to a consular officer to discharge a seaman, or upon the application of the seaman for his discharge, if it appears to such officer that said seaman has completed his shipping agreement, or is entitled to his discharge under any

act of Congress, or "ACCORDING TO THE GENERAL PRINCIPLES OR USAGES OF THE MARITIME LAW AS RECOGNIZED IN THE UNITED STATES, SUCH OFFICER SHALL DISCHARGE SAID SEAMAN, AND REQUIRE FROM THE MASTER OF SAID VESSEL, BEFORE SUCH A CHARGE SHALL BE MADE, THE PAYMENT OF THE SEAMAN'S WAGES WHICH MAY THEN BE DUE HIM."

The primary rule of construction is that the Legislature may be assumed to have meant precisely what in the words of the law it is commonly understood to import.

> *Endlich on Interpretation of Statutes*, Art 2.
> *U. S.* v. *Colorado & N. W. R. Co.*, 157 Fed., 321.

Can words be plainer than in the following:

> "* * * **the rules governing the engagement of seamen before a shipping commissioner in the United States, shall apply to such engagements made before a consular officer or commercial agent**" (Act of June 7th, 1872, Chap. 322, Sec. 15, 17 Stat. at Large, 275).

The "such engagements" refers to engagements of seamen in foreign ports on American vessels.

> "The payment of such advance wages or allotment shall *in no case* * * * absolve the vessel or the master or owner thereof from the *full* payment of wages after the same shall have been actually earned and *shall be no defense to a libel suit or action for the recovery of such wages.*"

Section 10 is part of an Act which was designed by Congress as a regulation of foreign commerce.

That this was the intention of Congress is apparent from a review of the whole statute and a consideration of *Gibbon* v. *Ogden,* 9 Wheat., 1, and *The Passenger Case,* 7 How., 283.

If the Act be regarded as strictly penal, Congress, under the power of the commerce clause, has ample authority to punish for extra-territorial offenses.

> "Especially may the power to punish citizens for acts done abroad be exercised where the penal act or offense is intended to take effect and operate within the limits of the United States, and would be cognizable by the Federal Courts if committed here."
>
> *U. S.* v. *Craig,* 28 Fed., 795, at p. 801.

A statute was involved in the case of *U. S.* v. *Gordon,* 5 Blatch., 18, which did not by its terms have extra-territorial application. The statute simply made it unlawful for a *citizen* employed on a foreign ship or *any person* employed on an American ship to engage in the slave trade. The Court held liable under such statute a defendant employed on an American ship who violated the provisions of said Act while the ship was in the River Congo, Africa. The Supreme Court held that the statute covered an American ship or an American citizen on a foreign ship in the Congo River of Africa.

This power of Congress under the commercial clause has been stated in the rule that the law follows the flag.

The Supreme Court has held in the case of *The Belgenland,* 114 U. S., 325, that in all matters that affect parties on board a ship or members of the

crew shall be determined by the laws of the country to which the vessel belongs (p. 364):

> "In the absence of such treaty stipulations, however, the case of foreign seamen is undoubtedly a serious one when they sue for wages unedr a contract which is generally strict in its character; and framed according to the laws of the country to which the ship belongs; framed also with a view to secure, in accordance with those laws, the rights and interests of the shipowners, as well as those of the master and crew, as well when the ship is abroad as when she is at home * * *."

Judge Addison Brown in *The Brantford City,* 29 Fed., 373, held in the case of an English vessel, that the law of the forum would apply to determine the rights of the owner of the cargo and owner of the vessel, in case of loss, where it was urged by the owners of the ship that the law of England, which recognized a stipulation in the charter relieving owners of liability for negligent stowing of cargo, would be upheld, Judge Brown applied the law of the forum, to wit, the laws of the United States.

It is evident from these conditions that not only had Congress ample power to enact Section 10a with the intent that it have extra-territorial effect, but that such is the actual scope and purpose of said section.

A comparison of the Dingley Act, of which the section in question was an amendment, reveals that the words now found in Subsection E of the present Act, "While in the waters of the United States," were not in the original Dingley Act.

It is a fair inference from the insertion of such a clause in the 1915 Act that Congress had in mind, in limiting its application to foreign vessels to the waters of the United States, that the Act apply

universally to American vessels. See dissenting opinion of Judge Hand, page 49, fol. 71, Transcript of Record in *Hardy-Windrush* case, where he says:

> "If Section 10(a) had not been amended in the clause here in question, I should have felt bound by the construction which Judge Brown had put upon it in *The State of Maine,* 22 Fed. R., 903, under the well-settled rule that a prior accepted interpretation of the statute is incorporated into its re-enactment. Moreover, I think that Judge Brown's decision was certainly right at the time he made it. His fourth reason for excluding American ships from the operation of the statute while in foreign ports seems to me unanswerable. The statute did not discriminate as he says between foreign vessels and those of the United States and it was necessary to give the general language of the statute the same application to one class as to the other.
>
> Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in Patterson against the Bark *Eudora,* 190 U. S., 169, held that foreign vessels were bound and obviously only while here. There was therefore not the slightest reason when *amending the statute* to add the clause 'while in waters of the United States' in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase 'foreign vessels.' If the statute had read 'as well to foreign vessels as to vessels in the United States while in waters of the United States' there could have been no doubt but the limitation by its position directly affecting one class seems to me to give the other its general meaning unless there was good contrary reason in the context."

This argument is not weakened by the attempt of Justice Hough in the Circuit Court opinion to reduce it to an absurdity (p. 47, fol. 68, *Hardy* v. *Windrush* record) in applying the same argument to the section relating to the clearances of said vessels, as the latter section is contained in both Acts (see p. 47, fol. 68, of the Transcript of Record).

The Circuit Court was also in error in supposing that it was stipulated that there was a practical necessity for patronizing the crimp in Buenos Ayres. There was no such stipulation. What was stipulated was that the master, if called to testify, would state that there was a necessity.

The only other decisions bearing remotely on the interpretation of this precise section are:

The Talus, 242 Fed., 976.
The Imberhorne, 232 Fed., 842.

In both of these cases Judge Ervin held that the section applied to foreign vessels, and that where foreign ship owners found themselves in our Courts in the position of asking recognition for validity to advances made in foreign ports, the approval of Courts of the United States could not be given in view of the inclusively prohibitive feature of the Act, as follows:

> "Payment of such advance wages or allotment shall in no case absolve the vessel or master and owner thereof from the full payment of wages after the same shall be actually earned, and shall be no defense to a libel, suit, or action for recovery of such wages."

And part of his opinion in the *Imberhorne* case is as follows:

> "(2) This brings us to the main question in the case. In the case of *The State of Maine* (D. C.), 22 Fed., 733, Judge Brown, in construing the Dingley Bill (Act June 26, 1884, C. 121, 23 Stat., 53), holds that, where advances were made to the seamen in a foreign jurisdiction in order to induce them to sign, such advance is not included under the prohibitory clause of the act, and hence such advance on wages should be deducted from the one-half of the wages earned by the seamen. His opinion is strongly and clearly written, and I AGREE IN THE MAIN WITH WHAT HE THERE SAYS IN HOLDING that the penalties declared by this act cannot be imposed upon the master or the vessel for acts done in a foreign jurisdiction. The Dingley Bill was amended by what is commonly called the 'Seamen's Act,' but the provisions of the Dingley Bill, as to forbidding advances on seamen's wages do not seem to be changed by the amendment. The *question in my mind is one that does not seem to have been considered by Judge Brown,* and is whether the provisions of Section 10 of the Dingley Act, as amended by the Seamen's Act, does not lay down a rule which a judge in this country is bound to follow in passing upon how one-half of the wages of a seaman is to be calculated. In other words, that even though the penalties declared by the act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seaman's wages that have been earned, WE ARE DIRECTED BY THE TERMS OF THE ACT TO EXCLUDE ANY ADVANCES WHICH MAY HAVE BEEN MADE BY THE SHIP TO THE SEAMAN, WHETHER MADE IN A FOREIGN JURISDICTION OR NOT, AND WE MUST FOLLOW THIS RULE IN CALCULATING

THE WAGES OF THE SEAMAN WHEN A LIBEL IS FILED IN THE ADMIRALTY COURTS OF THIS COUNTRY."

CONCLUSION.

It is respectfully submitted that the meaning and intent of Section 10a should be considered together with the main purposes of the Seamen's Act, which are expressed in the title, viz.: "An Act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto; and to promote safety at sea."

This legislation has been pending before Congress in more or less the same form, in which it eventually became a law, for twenty years. Our sea power has dwindled. Since the Civil War our people have been busy developing the natural resources of the country, and have not attempted to develop a merchant marine. When the subject did receive careful consideration of the members of Congress of 1915, it was discovered that the difference in wages necessarily obtaining because of treaty provisions on foreign and domestic vessels was a formidable barrier to the development of our sea power.

The provisions of the Seamen's Act directing the President of the United States to abrogate our treaties with all foreign nations; dealing with the arrest of deserting seamen in our ports, together with the enactment of Section 4530, giving the seamen the right to half of their earned wages then due, was intended to, and has equalized wages on all vessels engaged in American trade.

The economic law of supply and demand has been given free operation. The American ship owner to-day can obtain his crews as cheaply as can foreign ship owners.

The advance note system, whether existing in foreign or domestic ports, has a tendency to force wages down. Congress sought to further the interests of American ship owners and seamen as well, by stamping out as effectually as possible this evil practice, prohibiting them in the United States, and providing, or attempting to provide, the payment of advance wages, without the United States, shall in *no case receive the sanction of our Courts.*

The abolition of the advance note system is merely one part of the reformation intended by Congress to produce and make possible the continued existence of a body of clean, strong, American seamen.

"Sea power is in the seamen. Ships are but tools in the hands of the men that use them. The nation that nourishes and protects its seamen possesses sea power" (Fornseth on *Sea Power and the Seaman's Act*).

Respectfully submitted,

SILAS B. AXTELL,
Proctor for Petitioners.

VERNON S. JONES,
Of Counsel.

INDEX

THIRD POINT

FOURTH POINT

LAST POINT

AUTHORITIES CITED

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918

PAUL NEILSON *et al.* Petitioners (Libellants-Appellees) v. RHINE SHIPPING COMPANY, Owner of the Sailing Ship RHINE, Respondent (Claimant-Appellant)	No. 393
JOHN HARDY *et al.*, Petitioners (Libellants-Appellees) v. SHEPARD & MORSE LUMBER COMPANY, Owner of the Barkentine WINDRUSH, Respondent (Claimant-Appellant)	No. 394

STATEMENT

The facts are covered by stipulations (Neilson Record [No. 393] pp. 6-8; Hardy Record [No. 394] pp. 6-7). They are shortly stated in the District Judge's opinion as follows:

"In the first case Paul Neilson and nine other seamen sue for the recovery of wages claimed to be due them from the bark *Rhine*. It appears that they shipped on

the American bark *Rhine,* at Buenos Aires, Oct. 7, 1916, for a voyage to New York, at the rate of $25 per month. It is stipulated that the shipping of seamen on sailing vessels at Buenos Aires is controlled by certain shipping masters, to one of whom the libellants, in accordance with the usual custom and as a means of securing employment, signed a receipt or advance note for one month's wages. These advance notes were presented to the American Vice-Consul at Buenos Aires before the libellants signed the articles, were by him noted on the articles, and, in the presence of the liebllants, directed to be paid on account of the wages of the respective libellants. It was further stipulated that in directing the master of the *Rhine* to honor such advance notes, the Consul was acting in accordance with Section 237 of the Consular Regulations of the United States. When the bark arrived at New York the libellants were paid the wages earned, less the $25 advanced. They now seek to recover the sum thus deducted, by virtue of the terms of Section 10 (*a*) of the Act of March 4, 1915, entitled 'An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States,' which declares such advances to be unlawful and of no effect."

It is undisputed that the advances were paid. If the advances be recognized the libellants have no claim The stipulation as to the testimony of the master of the *Rhine* (which is uncontradicted) shows (Record, p. 6):

"that it would have been impossible to secure a crew for said ship at Buenos Aires except by agreeing to pay one month's wages in advance."

The stipulation shows (p. 7) that section 237 of the Consular Regulations provides:

"The shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction of the act referred to in the next preceding paragraph [statute against advances]."

As to securing employment and signing the advance notes, the testimony of Johanson on cross-examination in the Neilson case [No. 393] was that he met a runner for Willy Moore and

(pp. 11-12):

"Q. He just asked you if you wanted a job? A. Yes.
Q. And what did you say? A. I said 'if I can get a job, I want to get away from this place.'
Q. And what did he say? A. 'You can get a job if you come to me' and I said 'I will come.'
Q. Then what did he say? A. 'Come to me to-morrow morning at ten o'clock.'
Q. How many days was that before you went on the *Rhine?* A. One day before.
Q. And you went there. And what did he say then? A. We went to the consul.
Q. Where did you sign this advance note? A. In his home.
Q. What did he say to you when he asked you to sign it? A. If you want to sign for $25.00 a month wages and $25.00 advance.
Q. And did you sign a ticket? A. Yes.
Q. Would you recognize your signature if you saw it? Would you remember where you signed it if you could see the signature? A. No.
Q. Just come here. Is that your signature?
(Witness identifies his signature on ticket dated Buenos Aires, 7/10/16.)
(Claimant's Exhibit A for identification.)
Q. And then you went to the consul's after that? A. Yes.
Q. And you signed on the articles before the consul? A. Yes.
Q. Can you read? A. Not very proper.
Q. You can read though? A. Yes.
Q. Can you write? A. Yes.
Q. Just come here again. Are these the articles you signed before the consul? A. Yes.
Q. Will you point out your name? A. (Witness indi-

cates name 'August Johanson' on page 4 of articles, opposite No. 39).

Q. You signed your name on there before the consul? A. Yes.

Q. And all the rest of them did the same? A. Yes.

Q. Now, what did the consul tell you? A. He showed us that ticket that we write at Willy Moore's house and ask us if we sign it.

Q. Did he ask each one of you that? A. Yes.

Q. And what did you say? A. 'Yes'.

Q. And did the others all say 'Yes'? A. Yes.

Q. And then what did the consul say? A. That we have to write the name on this paper.

Q. Did he put the figures down here on the articles after he said to sign the advance note? A. No.

Q. When did you see the consul write this? A. Before he [we] wrote our name.

Q. And did everybody else do it the same way? A. Yes."

The Statute

Act of June 26, 1884, c. 121, sec. 10, 23 Stat. L. 55-56.

Act of March 4, 1915, c. 153, sec. 11, 38 Stat. L. 1168-69.

"Sec. 11. That section twenty-four of the act entitled 'An act to amend the laws relating to American seamen, for the protection of such seamen, and to promote commerce', approved December twenty-first, eighteen hundred ninety-eight, be, and is hereby, amended to read as follows:

"Sec. 24. That section ten of chapter one hundred twenty-one of the laws of eighteen hundred eighty-four, as amended by section three of chapter four hun-

dred twenty-one of the laws of eighteen hundred eighty-six be, and is hereby, amended to read as follows:

"SEC. 10. That it shall be, and is hereby, made unlawful in any case to pay any seaman wages *before leaving the port at which such seaman may be engaged* in advance of the time when he has actually earned the same, or to pay such advance wages to any other person, or to pay any person, other than an officer authorized by act of Congress to collect fees for such service, any remuneration for the shipment of seamen.

Any person paying such advance wages or such remuneration shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine not less than *four times the amount of the wages so advanced or remuneration so paid* and may be also imprisoned for a period not exceeding six months, at the discretion of the court. The payment of such advance wages or remuneration shall in no case, except as

"SEC. 10. (*a*): That it shall be, and is hereby, made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same, or to pay such advance wages, *or to make any order, or note, or other evidence of indebtedness therefor* to any other person, or to pay any person, for the shipment of seamen *when payment is deducted or to be deducted from a seaman's wages.*

Any person violating any of the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than *$25 nor more than $100* and may also be imprisoned for a period of not exceeding six months, at the discretion of the court. The payment of such advance wages or allotment shall in no case except as

herein provided, absolve the vessel, or the master or owner thereof, from full payment of wages after the same shall have been actually earned, and shall be no defense to a libel, suit, or action for the recovery of such wages: Provided, That this section shall not apply to whaling vessels: And provided further,

herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages.

If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment, as seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500.

That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages which he may earn to his wife, mother, or other relative, but to no other person or corporation.

(*b*) That it shall be lawful for any seaman to stipulate in his shipping agreement for an allotment of any portion of the wages he may earn to his grandparents, parents, wife, sister or children.

(*c*) That no allotment shall be valid unless in writing and signed by and approved by the shipping commissioner. It shall be

the duty of the said commissioner to examine such allotments and the parties to them and enforce compliance with the law. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement and shall state the amounts and times of the payments to be made and the persons to whom the payments are to be made.

(*d*) That no allotment except as provided for in this section shall be lawful. Any person who shall falsely claim to be such relation, as above described, of a seaman under this section shall for every such offense be punished by a fine of not exceeding $500 or imprisonment not exceeding six months, at the discretion of the court.

And any person who shall falsely claim such relationship to any seaman in order to obtain wages so allotted shall, for every such offense, be punishable by a fine of not exceeding five hundred dollars, or imprisonment not exceeding six months, at the discretion of the court.

This section shall apply as well to foreign vessels as to vessels of the United States;

(*e*) *That this section shall apply as well to foreign vessels while in waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master,*

owner or agent of a vessel of the United States would be for similar violation.

and any foreign vessel the master, owner, consignee or agent of which has violated this section, or induced or connived at its violation, shall be refused a clearance from any port of the United States.

The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with.

(*f*) That under the direction of the Secretary of Commerce the Commissioner of Navigation shall make regulations to carry out this section."

We have indicated by italics the only important respects in which there is any difference between the 1884 section and the 1915 section.

Argument

For the respondents we shall argue:

1. Under the Act of 1884 advances to seamen on shipment on an American vessel in a foreign country were not unlawful.

2. The amendment of 1915 did not change the law with respect to advances in foreign ports, and some of the changes made indicate more clearly than did the Act

of 1884 that it was not intended to prohibit advances in foreign ports.

3. The 1884 section as amended and re-enacted in 1915 carried with it into the 1915 section the interpretation which had been given it by the courts and the executive department of the Government.

4. Advances to seamen in foreign countries are not against the public policy of the United States, and cannot be nullified on that ground.

FIRST POINT

UNDER THE ACT OF 1884 ADVANCES TO SEAMEN ON SHIPMENT ON AN AMERICAN VESSEL IN A FOREIGN COUNTRY WERE NOT UNLAWFUL.

In 1884, the exact point here involved was decided in the vessel's favor by Judge Addison Brown in *The State of Maine,* 22 Fed. Rep. 734. There the master of the American ship *State of Maine,* then at Antwerp, endeavored to procure a crew without making advances of wages or paying sailors' bills, but was unable to do so except by providing for the payment of certain board bills. The seamen were shipped under the supervision of the American Consul at Antwerp, and the bills were paid by the master through the Consul. The correctness of the bills was certified by the signatures of the seamen. In rendering his account to the Shipping Commissioner after arrival at New York the master charged against

the crew the bills he had paid in their behalf at Antwerp. Four of the seamen denied their signatures, denied that the bills were owed by them, and libelled the vessel for full wages under section 10 of the Act of June 26, 1884. Judge Brown held that these bills, paid with the procurement and assent of the seamen, were valid offsets to their wages, and that the Act of 1884, although prohibiting such advances in United States ports, nevertheless did not render unlawful the advances made at Antwerp.

The facts in the case at bar cannot be distinguished from those in *The State of Maine.*

We adopt Judge Brown's own statement as the strongest argument against applying the statute to advances in foreign ports, and here quote the principal parts of his opinion. As to section 10 of the Act of 1884, Judge Brown said (22 Fed. Rep. at pp. 735-737):

"The language of this section is doubtless broad enough to embrace the shipment of seamen in foreign ports, as well as in ports of the United States; but statutes must be interpreted and applied according to their intention. The act, it will be perceived, is penal, as well as remedial. Whatever the act prohibits may, if committed, be punished by six months' imprisonment. There seem to me to be controlling reasons why the shipment of seamen in foreign ports cannot be considered as within the intention, and hence not within the proper construction, of this act.

1. Statutes have no extra territorial force. The shipment of seamen in a foreign port, and the payment either of advance wages or of bills previously incurred, as in this case, as an advance of wages, are acts done and completed wholly upon foreign soil; and therefore wholly beyond the jurisdiction of this country. If American vessels be treated as a part of the territory of the United States, and within its jurisdiction, though in foreign ports, still, acts like the present, that are not done upon shipboard, but, as I have said, are completed upon land

prior to the seamen's coming abroad, and as a means of procuring them to do so, would not be done within the territorial jurisdiction of this country. Every presumption is against the supposition that congress had any intention to legislate in reference to acts done and completed wholly beyond its jurisdiction. And while congress might, perhaps, subject the masters of American vessels, upon their return to this country, to punishment for acts done upon foreign soil, though such acts were lawful there, still, such an intention would not be presumed. Nor is such an intention sufficiently indicated by mere general language, that can be fully satisfied by its application to all such acts committed within the territorial jurisdiction of the United States. The intention to include acts done on foreign territory would only be inferred from some specific provisions, showing an indisputable intention to make the statute applicable to acts committed beyond our territorial jurisdiction. The provisions of this statute are not of that specific character.

2. The general purpose of this act is indicated by its title. Its various provisions, as well as the well-known circumstances which led to its passage, show that it was passed in order to correct certain practices and to reform certain abuses to which seamen were subject in the ports of this country. It is scarcely credible that in passing this act congress intended to undertake to correct similar evils in all parts of the world, if they everywhere exist. It had in view the reforms which were deemed necessary in our own ports, over which it had control; and there, presumably, its intention ends.

3. Having no power to carry out any such reforms in foreign territory, it is, again, scarcely credible that congress intended by this section to place American ships at a great disadvantage as compared with other ships in foreign ports, by preventing their obtaining seamen upon the same terms available to foreign vessels. This section, if applied to our vessels in foreign ports, would be wholly futile as regards the correction of any similar abuses there; and it would have no other practical effect than to cripple and disable our own shipping in foreign ports.

This is a result clearly foreign to the purposes of this act. 'All laws', say the supreme court in *U. S.* v. *Kirby*, 7 Wall. 486, 'should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language which would avoid results of this character. The reason of the law in such cases should prevail over its letter.' *Carlisle* v. *U. S.*, 16 Wall. 153.

4. The final clause of section 10, which declares that 'this section shall apply as well to foreign vessels as to vessels of the United States', and that in case of violation a clearance shall be refused them, furnishes a specific indication that congress did not in this section refer to the shipment of seamen in foreign ports, but had in view acts done in this country alone. For it is manifest that, as against foreign vessels in foreign ports, not only would this whole section be mere *brutum fulmen*, but the specific provision just referred to would be wholly inapplicable. Its only possible legal application to foreign vessels would be as regards their acts while within the ports of this country. And as the intent of this section is clear to make no discrimination between foreign vessels and domestic vessels, and as the section as to foreign vessels cannot possibly be applied as regards their acts done in foreign ports, it follows that the whole section must be deemed intended to apply to the ports of this country only."

Patterson v. *Bark Eudora*, 190 U. S. 169, strongly reënforces Judge Brown's conclusions. His decision was cited in the briefs submitted to this Court. There the statute against advances was held to apply to a British vessel which had shipped seamen at Portland, Maine, for a voyage to Rio and return to the United States or Canada, and had paid $20, with the consent and at the instance of each of them, to the shipping agent through

whom they were employed. Mr. Justice Brewer there said (p. 176):

"It may be remarked in passing that it does not appear that the contract of shipment or the advance payments were made on board the vessel. On the contrary, the stipulated fact is that the 'seamen were engaged in the presence of the British Vice Consul at the port of New York.' The wrongful acts were, therefore, done on the territory and within the jurisdiction of the United States."

Mr. Justice Brewer said further (pp. 178-9):

"Congress has thus prescribed conditions which attend the entrance of foreign vessels into our ports, and those conditions the courts are not at liberty to dispense with. The interests of our own shipping require this. It is well said by counsel for the government in the brief which he was given leave to file:

'Moreover, as ninety per cent. of all commerce in our ports is conducted in foreign vessels, it must be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtaining their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid, and if in a large port like New York ninety per cent. of the vessels are permitted to prepay such seaman as ship upon them, and the other ten per cent., being American vessels, cannot thus prepay, it will be exceedingly difficult for American vessels to obtain crews. This practical consideration, presumably, appealed to Congress and fully justified the provision herein contained.'"

The considerations last stated by Mr. Justice Brewer show strongly that the reason why the statute should apply to a foreign vessel in our ports is the very reason why it should not apply to an American (or other) vessel in a foreign port. If in a foreign port, as at Buenos Aires, an American vessel, in competition with foreign vessels, cannot secure a crew except by paying advances,

then a prohibition against advances results in those obstructions and disabilities to our shipping which it is the very purpose of our statutes to prevent. All reason is against any interpretation of the statute which would bring about such a result.

SECOND POINT

THE AMENDMENT OF 1915 DID NOT CHANGE THE LAW WITH RESPECT TO ADVANCES IN FOREIGN PORTS, AND SOME OF THE CHANGES MADE INDICATE MORE CLEARLY THAN DID THE ACT OF 1884 THAT IT WAS NOT INTENDED TO PROHIBIT ADVANCES IN FOREIGN PORTS.

The 1884 section and the 1915 section are printed in parallel columns on pages 4-8, *supra*. A glance at the italics there appearing will show all the differences worth mentioning. The history of this section as to advances is given in Vol. 7 U. S. Comp. Stat., 1916, Sec. 8323.

The only language in the 1915 section which bears directly on locality of application is subdivision (*e*), which provides:

"That this section shall apply as well to foreign vessels while in waters of the United States as to vessels of the United States."

The 1884 section provided:

"This section shall apply as well to foreign vessels as to vessels of the United States."

The dissenting opinion of Judge Learned Hand in the Circuit Court of Appeals was based solely on these seven words. He said (Record, p. 23):

"Under that statute not only did Judge Brown hold that vessels of the United States were controlled only while here, but the Supreme Court in *Patterson* v. *Bark Eudora,* 190 U. S. 169, held that foreign vessels were bound and obviously only while here. There was therefore not the slightest reason when amending the statute to add the clause, 'while in waters of the United States,' in order to provide the necessary limitation. Furthermore, I attach significance to the direct conjunction of the limiting clause with the phrase, 'foreign vessels.' If the statute had read 'as well to foreign vessels as to vessels of the United States, while in the waters of the United States,' there could have been no doubt, but the limitation by its position directly affecting one class seems to me to give the other its general meaning, unless there was good contrary reason in the context."

THE PROVISION CONCERNING FOREIGN VESSELS "WHILE IN WATERS OF THE UNITED STATES" DID NOT PRESCRIBE A RULE FOR AMERICAN VESSELS IN FOREIGN COUNTRIES.

The insertion in the 1915 section of the words "while in waters of the United States" clearly got its impetus from *Patterson* v. *Bark Eudora, supra,* which held that a British vessel while in waters of the United States was subject to the prohibition against advances. The purpose of this insertion was to make it plain to foreign ship owners, particularly in view of the abrogation of treaties provided for by the Act of 1915, that while their vessels were in our ports, our statute against advances would be applied to them. See *The Ixion,* 237 Fed. Rep. 142; *The London,* 238 Fed. Rep. 645, aff'd, 241 Fed. Rep. 863. This did not reflect an intention that as to American

vessels the prohibition against advances should apply in foreign countries.

The only purpose of naming American vessels in this subdivision was to denote the law to which foreign vessels should be subject, as otherwise it was unnecessary to mention American vessels at all. The fact that the application of the statute to foreign vessels is limited by the time they are in waters of the United States does not suggest that American vessels are under prohibitions both in waters of the United States and in all other waters and places.

The provision for application of the section to foreign vessels "while in waters of the United States" did not expand the section to apply to transactions relating to American vessels done on land in foreign countries. The provision deals only with foreign vessels, and it is reasonable to limit it to such vessels. Enough justification for its insertion in the 1915 section may be found in *Patterson* v. *Bark Eudora, supra,* where this Court, answering the contention that because a foreign ship was involved the prohibition did not apply, took the point that the advances were made on land. Congress may well be supposed to have wished it made clear that the section applied to a foreign ship in our waters, irrespective of whether the advances were made on land or on shipboard. After this Court had held the section applicable to foreign vessels while in our ports and, inferentially, then only, it was quite natural that, with no other purpose than conforming the statute to the decision, Congress should carry into the amended section the limitation thus suggested.

It is a thankless task to torture inapt expressions into declarations of intention, and thus seek to construct an inclusive and intelligent statute. If it be assumed that Congress could have intended by this provision to make the prohibition apply to advances in foreign countries, we find it hard to imagine any more indirect or ambiguous method of effecting this result. The Congressional Debates and Reports do not disclose that Congress was acquainted with or had in mind advances made in foreign countries. Nor, so far as we have been able to find, do they make any reference to Judge Brown's decision in *The State of Maine, supra,* or to the conditions which gave rise to that case and this. It was common knowledge, however, that foreign seaman's laws differed from our own and in many instances permitted advances, and undoubtedly for that reason it was deemed prudent (and only courteous to foreign nations in view of the proposed abrogation of treaties with respect to seamen on foreign ships) to insert in the section a specific declaration of the time, *i. e.,* while they should be in United States waters, that foreign ships would be subject to this section.

The very fact that our law applies to foreign vessels while in our ports is one of the strongest arguments why it should be held not to apply to our vessels while in foreign ports. In other words, we should recognize the law of foreign countries with respect to our vessels in their ports, just as we expect foreign countries to recognize our law with respect to their vessels in our ports. This but accords with the general doctrine that when a merchant vessel of one country enters a port of another for the purposes of trade it subjects itself to the law of the place to which it goes. *Wildenhus's Case,* 120 U. S.

1, 11. It can make no difference that the master was not compelled by Argentine law to make the advances. It was necessary for him to make the advances before he could get a crew, and there is nothing to suggest that the advances were unlawful at Buenos Aires. Payment of the advances was by the law there prevailing a valid payment on account of wages, and the rights between the ship and the seamen created by that payment should not be destroyed because a similar payment, if made here, would have been invalid. Ordinarily the validity and effect of a payment are determined by the law of the place where the payment is made, as is likewise the validity of a contract. The contracts between the ship and the seamen as well as the advances were made on shore at Buenos Aires. "The general and almost universal rule is that the character of the acts as lawful or unlawful must be determined wholly by the law of the country where the act is done", said Mr. Justice Holmes in *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 356.

For what reason shall the well established rules of law be set aside in this case? It is said that performance of the seamen's contracts was to be on an American vessel. But that is wholly immaterial. Questions concerning performance are governed by the law of the place of performance, but questions concerning the making and validity of the contract are governed by the law of the place where the contract is made. *Scudder* v. *Union Natl. Bank*, 91 U. S. 406.

THE "FLOATING ISLAND" THEORY IS INAPPLICABLE.

The theory that the ship was a "floating island" and thus a part of American territory subject to American law, has a very limited application, and so to speak of her is only to employ a metaphor, as was said in *Queen* v. *Keyn,* L. R. 2 Ex. Div. 63, 93-94. Although appropriate to a vessel on the high seas, because there is no other law which can be supposed to be in effect, the "floating island" theory cannot properly apply when the vessel is in the territorial waters of a foreign country, and there can be no justification for applying this theory to transactions on land in a foreign country even though they concern the vessel.

Performance of service on the vessel is the seaman's part of the contract, payment of wages is the owner's part. It would be a curious *non-sequitur* to hold that the fact that the seaman's service was on an American vessel varied the effect of the payment made in a foreign country.

This is not to say that some of our laws are not in force on American ships wherever they sail.

The presumption is that Congress did not intend to impose on American vessels in foreign ports restrictions which would prevent competition on equal terms with foreign vessels there.

THE PENAL PROVISIONS OF THE SECTION SHOW THAT IT WAS NOT INTENDED TO APPLY TO AMERICAN VESSELS IN FOREIGN COUNTRIES.

The conclusion that the prohibition does not apply to advances in foreign counties is made certain by other provisions. Thus, for violating any of the provisions of

the section any person is guilty of a misdemeanor, and punishable by fine and imprisonment for six months equally by the 1884 section and the 1915 section. Further, by the 1915 section any person who demands or receives from the seaman remuneration for providing him with employment is guilty of a misdemeanor and may be imprisoned for six months or fined $500. The master, owner, etc., of a foreign vessel violating the section is liable to the same penalty as the master, owner, etc., of a vessel of the United States for a similar violation. Subdivision (*e*) of the 1915 section has the following significant provision:

"The master, owner, consignee, or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with."

Provisions as to penalties and refusal of clearance are intelligible only in relation to United States ports, to which, indeed, the provision last quoted specifically limits itself. Nobody suggests that the customs or other clearance authorities of foreign countries are charged with the enforcement of our shipping laws. All the provisions regarding breach of the statute are susceptible of enforcement only in the United States. Since the penalties are made applicable equally to both American and foreign vessels, and since the statute must be interpreted consistently with itself, the prohibition against advances cannot properly be held to apply to advances in a foreign country.

THE TITLE OF THE ACT OF 1915 INDICATES NO DIFFERENT PURPOSE FROM THAT OF THE ACT OF 1884, AND THE PROVISION WITH RESPECT TO ADVANCE PAYMENTS NOT BEING A DEFENSE IS UNCHANGED.

The fact that the title of the 1915 statute suggests that it was passed for the benefit of seamen is not material. The statute of December 21, 1898, which it amended (which statute was itself an amendment of the Act of 1884 and the Act of 1886) was itself an act "to amend the laws relating to American seamen, for the protection of such seamen", etc. From 1884 to 1915 the section showed on its face that it was for the benefit of seamen and the title of the Act of 1915, therefore, adds nothing, even if the title of the Act could affect the clear meaning of the words, which it can not. Let it be conceded that the statute is remedial, the remedy cannot be applied more broadly than the prohibition.

The provision that

> "The payment of such advance wages or allotment shall in no case, except as herein provided, absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned and shall be no defense to a libel, suit or action for recovery of such wages"

is emphasized by the petitioners to support their contention that advances may be recovered in our courts, irrespective of where they were made. Irvin, *D. J.*, accepted this argument in the *Talus* case [No. 392].

The last quoted provision was not amended by the Act of 1915, but is the same as it was when *The State of Maine* was decided.

Moreover, the provision is incorporated into the penal part of the statute and cannot be segregated from it and

applied to a situation where the penal part would be without force. If the statute as a whole does not apply, a single clause does not. The language of Grubb, *D. J.*, speaking for the Circuit Court of Appeals for the Fifth Circuit in the *Talus* case [No. 392] is apposite.

"We think the reasonable construction of the section is that it covers only such advances as it was within the competency of Congress to criminally punish the making of, viz: advances made within the territorial waters and jurisdiction of this country by whomever made and to whomever paid. This gives the section a legitimate field of operation. * * * Congress might have treated it, by imposing as a condition upon the entry to and clearance from American ports of both foreign and domestic vessels, that all advances, which were made to seamen in a foreign port before the voyage began, should be agreed by the ship to be disregarded in settlements required by the law to be made with seamen in the ports of this country. Instead of doing so, it went further and provided that every advance, prohibited by the act including those made by the agents, owners or masters of foreign ships, should be punishable as a misdemeanor. Its determination to make the criminal penalty cover all advances prohibited by the section indicates that its intention was to limit the scope of the prohibited advances to its undoubted competency in that respect; *i. e.*, to such as were made within its undoubted jurisdiction to punish crimes. It also prevents a construction that would separate the penalty provisions from any class of the prohibited advances, and so sustain the law in other respects as to the class of advances to which the penalties are legally inapplicable, since the penalty provision is as wide as the prohibition itself and covers every advance, whether made by a domestic or foreign ship which is prohibited by the terms of the act."

THIRD POINT

THE 1884 SECTION WHEN AMENDED AND RE-ENACTED IN 1915 CARRIED WITH IT INTO THE 1915 SECTION THE INTERPRETATION WHICH HAD BEEN GIVEN IT BY THE COURTS AND THE EXECUTIVE DEPARTMENT OF THE GOVERNMENT.

No proposition of law is better settled than this.

Congress must be taken to have known Judge Brown's decision in *The State of Maine, supra,* and also Section 237 of the Consular regulations, both to the effect that the prohibition against advances did not apply to an American vessel in a foreign port. In the face of this knowledge Congress amended and re-enacted the 1884 section without change in any respect affecting the previous decisions and practice as to its application. Thus Congress, not dissenting, but acquiescing, in reality adopted and proclaimed Judge Brown's construction and the executive practice as showing the intent of the statute, which is now to be read as if that intent were expressly stated in it. We submit, therefore, that the courts are not now free to give the statute a different interpretation, irrespective of what might now be decided if the question were *res nova.*

Lewis's Sutherland on Statutory Construction, 2nd ed., Vol. 2, Sec. 403, says:

"Re-enacted Statutes and Parts of Statutes. In the interpretation of re-enacted statutes the court will follow the construction which they received when previously in force. The legislature will be presumed to know the effect which such statutes originally had, and by re-enactment to intend that they should again have the same effect. The same rule applies to the readoption of a constitutional provision. It is not necessary that a statute

should be re-enacted in identical words in order that the rule may apply. It is sufficient if it is re-enacted in substantially the same words. The same principle applies when a statutory provision is taken from a constitutional provision which has been construed. The rule has been held to apply to the re-enactment of a statute which has received a practical construction on the part of those who are called upon to execute it." * * *

In *Sessions* v. *Romadka,* 145 U. S. 29, 42, Mr. Justice Brown said:

"Congress, having in the Revised Statutes adopted the language used in the Act of 1837, must be considered to have adopted also the construction given by this Court to this sentence and made it a part of the enactment."

In *Logan* v. *United States,* 144 U. S. 262, 302, it was said:

"The combination and transposition of the provisions of 1862, 1864 and 1865, in a single section of the Revised Statutes, putting the two provisos of the later statute first, and the general rule of the earlier statute last, but hardly changing the words of either, except so far as necessary to connect them together, cannot be held to have altered the scope and purpose of these enactments, or of any of them. It is not to be inferred that Congress, in revising and consolidating the statutes, intended to change their effect, unless an intention to do so is clearly expressed."

See also

Fisk v. *Henarie,* 142 U. S. 459; *United States* v. *Ryder,* 110 U. S. 729, 739-40; *McDonald* v. *Hovey,* 110 U. S. 619; *Black, Interpretation Laws,* 1896 Ed., p. 369; *Sedgwick, Statutory & Constitutional Law,* 2nd ed., pp. 365-366; *St. George* v. *Rockland,* 89 Maine, 43; *United States* v. *Trans-Missouri Freight Ass'n.,* 58 Fed. Rep. 58; *United States* v. *Albright,* 234 Fed. Rep. 202; *In re Guggenheim Smelting Co.,* 121 Fed. Rep. 153.

FOURTH POINT

ADVANCES MADE TO SEAMEN IN FOREIGN COUNTRIES ARE NOT AGAINST THE PUBLIC POLICY OF THE UNITED STATES, AND CANNOT BE NULLIFIED ON THAT GROUND.

Whether the question be considered from the point of view of an assignment of wages or the hiring of seamen, in either case we deal with a transaction fully executed and valid at the place of performance. The respondents are not seeking affirmative relief. Therefore the rule of public policy has no application to these cases. See *International Harvester Co.* v. *McAdam,* 142 Wis. 114, and authorities there cited. Marshall, *J.*, said (p. 120):

"The last rule that need be stated is this: A contract under the foregoing is not, necessarily, contrary to the public policy of a state, merely because it could not validly have been made there, nor is it one to which comity will not be extended, merely because the making of such contracts in the place of the forum is prohibited, general statements to the contrary notwithstanding. In *Milliken* v. *Pratt,* 125 Mass. 374, 28 Am. Rep. 241, the court remarked substantially, even a contract expressly prohibited by the statutes of the state in which the suit is brought, if not in itself immoral (the term 'immoral' being used in the broadest sense), is not, necessarily, nor usually, deemed so invalid that the comity of the state, as administered by its court, will refuse to entertain an action under all circumstances to enforce it. There must be something inherently bad about it, something shocking to one's sense of what is right as measured by moral standards, in the judgment of the courts, something pernicious and injurious to the public welfare. In Greenhood on Public Policy at page 46, cited by counsel, the following rule is deduced from the authorities cited:

'When a contract is valid under the public policy of the state where made, it will be enforced in another

state, although the same would by the statute laws of the latter state be void, unless its enforcement would exhibit to the citizens of the state an example pernicious and detestable.'

"It will occur to one, on a moment's reflection, that the last foregoing rule could not be otherwise, else the doctrine that a contract valid at the place where made is valid and, generally speaking, enforceable everywhere, would be wholly nullified as to foreign contracts which would not be valid if made in the place enforcement is sought."

On this point, Hough, *C. J.*, said in the court below (Record, p. 23):

"Therefore the contention becomes this, that this executed contract must be set aside, because the statute in effect declares it repugnant to the 'policy and morality' of the people of the United States. We discover no consensus on this point of morals in the written law, there is no evidence on the subject, and the rule appealed to ordinarily affects only executory contracts."

LAST POINT

IT IS RESPECTFULLY SUBMITTED THAT THE DECISION OF THE CIRCUIT COURT OF APPEALS SHOULD BE AFFIRMED, WITH COSTS.

BURLINGHAM, MONTGOMERY & BEECHER
Proctors for Respondents

ROSCOE H. HUPPER
Of Counsel

October, 1918